

FINAL STATEMENT OF REASONS
Rigid Plastics Packaging Container Program

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GENERAL COMMENTS

The Rigid Plastic Packaging Container (RPPC) Act of 1991 (Hart, Chapter 769, Statutes of 1991) was passed by the Legislature, and approved by the Governor on October 9, 1991. The law took effect as Public Resources Code (PRC) Section 42300 et seq. on January 1, 1992. As required by PRC Section 42325, regulations were adopted by the California Integrated Waste Management Board on July 1, 1994 and became effective January 1, 1995.

The law requires every RPPC offered for sale in California to meet, on average, one of five compliance criteria. These criteria were designed to encourage reuse and recycling of RPPCs, the use of more postconsumer resin in RPPCs, and a reduction in the amount of virgin resin used to manufacture RPPCs.

The California Integrated Waste Management Board (CIWMB) adopted an all-container recycling rate range of 23.3 percent to 25.2 percent for 1995 and did not pursue any enforcement certification. Because the recycling rate was below 25 percent for 1996 through

2001, the Board directed staff to enforce the requirements of statute and law requiring certification from randomly selected product manufacturers. Changes in statute in 2004 (Chesbro, Chapter 561, Statutes of 2004) eliminated the all-container and polyethylene terephthalate (PET) recycling rate compliance option. Therefore, the Department no longer calculates the all-container recycling rate, and requires compliance certifications from randomly selected product manufacturers.

With several years of experience conducting certification cycles and taking individual enforcement actions, it has become clear that there are inconsistencies and unnecessary redundancies and complexities in the regulations. Amendments to the regulations are essential to clean-up, clarify, and simplify the provisions to level the playing field among regulated product manufacturers.

The purpose of the regulatory modification is to delete obsolete provisions, clarify and ensure consistency with recent statutory changes, remove the question and answer format that stakeholders said was confusing, clarify specific definitions, clarify the certification process to provide clear direction to the regulated industry, clarify the compliance calculations, refine the penalty calculations, and make other grammatical and punctuation corrections.

Throughout the regulations, there has been an inconsistent use of the section symbol (§), and the reference of section with a capital "S" or with a small-letter "s." The proposed regulations rectify the inconsistencies to note each section with a capital "S." In each section or subsection where these inconsistencies are corrected, along with other amendments, the following statement will appear: "Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations."

The current regulations are difficult to follow, and as a result of new legislation, the proposed regulations required extensive reorganization to make the regulations clearer and easier to follow. As a result, the Final Statement of Reasons (FSOR) is organized as follows:

- The current section is discussed first. When the current section is deleted, the discussion of the purpose and necessity to repeal the section is discussed under the current section.
- If there will be a proposed section with the same number, the purpose and necessity of the proposed section is discussed second.
- Where a current section is proposed to be moved, or moved and amended, the action is identified under the current section. The discussion of the purpose and necessity of the move, or amendment and move is discussed under the proposed section.

Prior to initiating the formal rulemaking process, an informal process was conducted to get stakeholder input. Workshops and meetings were April 17, 2007, May 16, 2007 and June 26, 2007. In addition to the workshops and meetings, a review and comment period was conducted from August 21, 2007 to September 4, 2007. The information obtained during the informal process was used to make proposed changes to the regulations.

In November 2007 the Permitting and Enforcement Committee of the California Integrated Waste Management Board directed staff to begin the formal rulemaking process. Preparing the

rulemaking documents and Economic and Fiscal Analysis took some time. The Economic and Fiscal Analysis was approved in December 2010.

OAL publicly noticed the proposed regulations on February 11, 2011, initiating the required 45-day public comment period. The comment period closed on March 28, 2011 and a public hearing was held on April 8, 2011.

Four workshops were held on April 8, May 17, June 8 and June 22. Based on analysis of the 45-day comment period comments, the workshops and additional issues identified by staff, extensive revisions were made to the regulations. Because regulations revisions were substantial, a second 45-day public comment period was conducted. The second 45-day comment period ran from July 29 through September 15, 2011.

Some additional revisions were made to the regulations prompting a 15-day public comment period. The comment period ran from October 31 through November 15, 2011.

On January 17, 2012, the Department adopted the revised Rigid Plastic Packaging Container (RPPC) regulations which also included non-substantive, technical, and clarifying changes to the text that were identified after the 15-day comment period.

The Department of Resources Recycling and Recovery (Department) succeeded the California Integrated Waste Management Board (CIWMB) and its authority on January 1, 2010.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

For all the changes proposed in these regulations, the following statement applies:

Alternatives to the proposed regulations have been considered, including a “no-action” alternative. The Department has determined that: 1) no alternative would be as effective and less burdensome to private persons, while at the same time protecting human health, safety, and the environment; and 2) no alternative would lessen adverse economic impact on small businesses while protecting human health, safety, and the environment. The Department has attempted to use reasonable performance standards rather than prescriptive standards and to minimize the impact on small businesses while still promoting health, safety and environmental benefits and collecting the information required by statute.

The Department would like to highlight several specific issues and alternatives considered to improve the clarity, accuracy and equity of the RPPC program, specifically with regards to:

- ❖ Material Type and Resin Switching as a Source Reduction Compliance Option
- ❖ Greenhouse Gas Emissions Related to Resin Switching to Comply with Source Reduction Requirements
- ❖ Limitation on Use of Post-Industrial Material to Meet Postconsumer Material Requirements
- ❖ Reusable Rigid Plastic Packaging Containers
- ❖ Regulation of Almost Identical Containers
- ❖ Availability of Postconsumer Material
- ❖ Definition of Rigid Plastic Packaging Container Volume
- ❖ Relatively Inflexible Container
- ❖ Pre-Certification Process

- ❖ Product Manufacturer Selection and Notification Process
- ❖ Exempt Rigid Plastic Packaging Containers
- ❖ Advisory Opinions
- ❖ Penalties on Container Manufacturers for Providing False Information
- ❖ Good Faith Effort” Requirements and Factors to Consider Regarding Impacts on Small Businesses Before Issuing a Penalty
- ❖ Economic and Fiscal Impact Statement
- ❖ Effective Date of Regulations

These issues and alternatives considered are described below.

❖ Material Type and Resin Switching as a Source Reduction Compliance Option

The Integrated Waste Management Board (Board) directed Staff to carefully re-evaluate the basis for resin switching as a source reduction compliance option in 2008. Staff needed to determine if it was appropriate to allow a container to qualify as a source reduced container based only on light-weighting as a result of resin-switching. Staff 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. Staff was directed by the Integrated Waste Management Board to review this issue. The Department succeeded to the Integrated Waste Management Board’s authority on January 1, 2010, pursuant to PRC section 40401. **Based on its review, the Department determined that “material type” was improperly defined and therefore resin switching was impermissible.**

The determination of whether resin switching is allowed under the source reduction compliance option is dependent on the definition of “material type” as applied to PRC Section 42301(j). “Material type” is not defined within PRC Section 42301. “Material type” is not used in any other part of PRC Sections 42300 et. seq.

In the 1994 Rulemaking ISOR (no analysis was provided on this topic in the FSOR), the Board acknowledged ambiguity regarding the undefined term “material type”, ignored the availability, or discounted the validity, of other compliance options, and interpreted the regulation to provide “maximum flexibility to manufacturers.” The Department believes the current definition of “material type” does not take into account all relevant statutes and conflicts with applicable statutory language.

It is important to note that even under the current definition of “material type” the Department could exercise its discretion to exclude containers utilizing resin switching from the source reduction compliance option if, in the Department’s discretion, it was determined that the change to the container would adversely affect the potential of the RPPC to be recycled or made of postconsumer material. (42301(j)(2)(C).)

Several statutes are relevant to the interpretation of “Source Reduced Container” and formulation of the definition of the regulatory definition of “Material type”;

PRC Section 42301(j) states:

(1) "Source reduced container" means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been

reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

- (B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:
- (i) The packaging used for the product by the manufacturer on January 1, 1995.
 - (ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.
 - (iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.
- (2) A rigid plastic packaging container is **not a source reduced container** for the purposes of this chapter if the packaging reduction was achieved by any of the following:
- (A) Substituting a different **material type** for a material that previously constituted the principal material of the container.
 - (B) Increasing a container's weight per unit or use of product after January 1, 1991.
 - (C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

The current regulatory definition of "Material Type", last amended in 1994, defines "Material Type" to mean broad feedstock categories such as paper, glass, plastic or aluminum. The current regulatory definition of "Material type" does not mean individual plastic resins. (14 CCR Section 17943(b)(14).)

Applying the current definition to PRC Section 42301(j)(2)(a) would mean that resins are not material types and therefore switching resins would not necessarily exclude these containers from the definition of "Source reduced container." (PRC Section 42301(j).)

However, the current, above referenced, definition of "Material type" is in conflict with PRC Section 18015. PRC Section 18015, added in 1988 and amended in 1989, predating Senate Bill 235 which created the Plastic Packaging Containers program, uses the term material to mean a single resin type.

PRC Section 18015 states:

- (a) All rigid plastic bottles and **rigid plastic containers** sold in California on and after January 1, 1992, shall be labeled with **a code which indicates the resin** used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecups of **a different material shall be coded by their basic material.**

The numbers and letters used shall be as follows:

- 1 = PETE (polyethylene terephthalate)
- 2 = HDPE (high density polyethylene)
- 3 = V (vinyl)
- 4 = LDPE (low density polyethylene)
- 5 = PP (polypropylene)
- 6 = PS (polystyrene)
- 7 = OTHER (includes multilayer)

- (b) A "7" shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.

Lending support to the argument that PRC Section 18015 was a statutory section which was intended to be used by the drafters of PRC Sections 42300 et seq., the Rigid Plastic Packaging Container Program statutes do specifically reference PRC Section 18015.

PRC Section 42301 (i) states:

"Recycling rate" means the proportion, as measured by weight, volume, or number, of a rigid plastic packaging container sold or offered for sale in the state that is being recycled in a given calendar year, that is one of the following:

- (1) A particular type of rigid plastic packaging container, such as a milk jug, soft drink container, or detergent bottle.
- (2) A product-associated rigid plastic packaging container. (PRC Section 42301(i).)
- (3) A single resin type, **as specified in Section 18015**, of rigid plastic packaging container, notwithstanding the exemption of that container from this chapter pursuant to subdivision (b), (c), or (d) of Section 42340.

PRC Section 42301 (l) states:

"PETE" means polyethylene terephthalate **as specified in** subdivision (a) of **Section 18015**.

Based on a definition of "material type" consistent with PRC Section 18015, the proposed definition of "Material Type" for purposes of this Article means feedstock categories, such as, but not limited to, paper, glass, or aluminum and individual plastic resins. (Proposed, 14 CCR Section 17943(i).)

Including different resin types within the definition of "material type" would expressly prohibit containers that switched resin types from meeting the definition of "Source reduced container" in PRC Section 42301(j).

Based on the analysis, the appropriate definition of "Material type" based on applicable statutory language, includes different resin types. For the above reason, the Department has determined that the definition for "Material type" in regulations should be changed to be more consistent with above referenced existing statutory language. Additionally, the change in the definition of "Material type" results in the elimination of resin switching as a compliance option in the definition of source reduced container in adopted revised regulations 14 CCR Section 17943 (af).

Regulation of material type issues are discussed further in proposed 14 CCR Section 17943 (i). Regulation of source reduced container issues are discussed further in proposed Subsection 17943 (af).

❖ Greenhouse Gas Emissions Related to Resin Switching to Comply with Source Reduction Requirements

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 implement alternatives which permitted resin switching.** However, the Department will address greenhouse gas (GHG) emissions information raised by product and container manufacturers in support of resin switching in general terms.

Product manufacturers and container manufacturers stated that resin switching should be allowed as source reduction based on the Department's Strategic Directive #3 which states in part that all materials be properly managed in order to minimize the generation of waste (source reduction), maximize the diversion of materials from landfills, and manage all materials to their highest and best use, in accordance with the waste management hierarchy and in support of the California Global Warming Solutions Act of 2006. There are multiple legislative and policy intents for CalRecycle Programs. The RPPC statute requires that source reduction meet several requirements specified in PRC 42301(j). The specific RPPC requirements take precedence over general legislative and policy intent language from other laws.

The product and container manufacturers provided projected savings in GHG impacts during the rulemaking process that relied heavily on the 2011 Franklin Associates Life Cycle Inventory (LCI) of nine virgin resins prepared for the Plastics Division of the American Chemistry Council. The dashed box in the flow chart below indicates the boundaries for the LCI analysis. "The cradle-to-gate life cycle inventory (LCI) presented in this study quantifies the total energy requirements, energy sources, atmospheric pollutants, waterborne pollutants, and solid waste resulting from the production of nine plastic resins and two polyurethane precursors. It is considered a cradle-to-gate LCI because this analysis ends at the resin/precursor production process. The system boundaries stop at resin or precursor production so that the resin/precursor data can be linked with fabrication, use, and end of-life data to create full life cycle inventories for a variety of plastic products" (page 1-1).

In addition, the Department reviewed data from a Franklin Associates report published in 2010, *Life Cycle Inventory of 100% Postconsumer HDPE and PET Recycled Resin from Postconsumer Containers and Packaging*. Results concluded that recycled resins create fewer GHG emissions than virgin resins.

Data from the 2011 Franklin Associates cradle-to-gate LCI for virgin resins must be linked with fabrication, use, and end of-life data to create a full cradle-to-grave inventory for the current HDPE product or the proposed PP product. So results from greenhouse gas analysis done using just the cradle-to-gate data are incomplete and do not reflect the total GHG impacts. The Department agrees that, provided all other variables stay the same (i.e., container size, quantity of product transported, mode of transport, distance, etc.), shipping lighter containers will result in reduced transportation emissions and that this data needs to be included in a complete GHG impacts analysis.

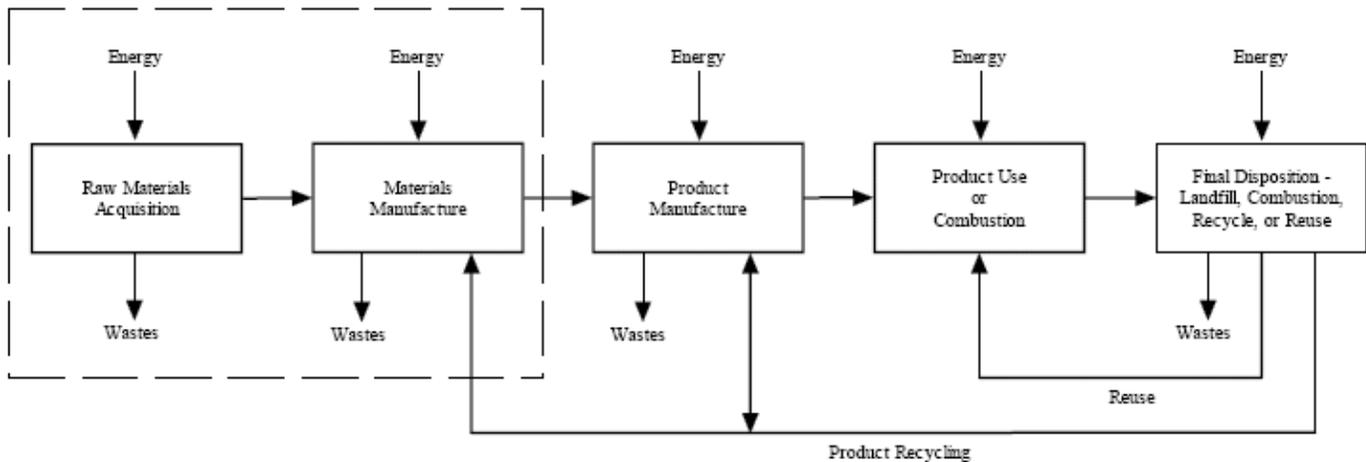


Figure 1-1. General materials flow for "cradle-to-grave" analysis of a product system. The dashed box indicates the boundaries of this LCI analysis. No recycled content or recycling is included in this analysis.

Franklin Associates, a Division of Eastern Research Group, Inc. (February 2011). *Cradle-to-Gate Life Cycle Inventory of Nine Plastic Resins and Four Polyurethane Precursors*.

A separate analysis would need to be conducted for each type of container that proposed to use resin switching as a source reduction compliance option to determine total GHG impacts of such a switch. In summary, the GHG information submitted by the product and container manufacturers was partial and the Department would not have been able to rely on it to determine total GHG impacts of resin switching.

❖ Limitation on Use of Post-Industrial Material to Meet Postconsumer Material Requirements

Product Manufacturers and Container Manufacturers expressed concerns regarding the potential negative impacts within the market by not allowing post-industrial material to count as postconsumer material. These stakeholders' main concern was post-industrial material could no longer be used to meet the most commonly used compliance option, 25 percent postconsumer material. Plastic processors and environmental groups said the intent of the law is to increase postconsumer plastic markets, not increase use of post-industrial plastic, and to reduce RPPC impacts on disposal. Product manufacturers asked that the Department's definition be linked to the Federal Trade Commission's Green Marketing Guidelines.

Statute excludes post-industrial material commonly reused within an original fabrication or manufacturing process from the definition of postconsumer material (PRC Subsection 42301(g)). Overall the program's purpose is to help create markets for postconsumer material (see PRC Section 42300 (j)), not post-industrial material.

The proposed definition of postconsumer material (PCM) has been refined to clarify that obsolete or unsold products that are commonly disposed (not reused) shall be considered PCM when used as feedstock for new RPPCs. Additionally, rejected finished plastic packaging that has been commonly disposed and not reused in the original manufacturing and fabrication

process may be considered postconsumer material. However, materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process are not considered postconsumer material. The revised definition made has reduced the number of concerns with this issue.

The Federal Trade Commission's Green Marketing Guidelines are related to the need to use data to make environmental marketing claims. They are strictly a voluntary business practice, they are not mandated by the Federal government and the Federal government can change the Guidelines at any time, so they have not been included in the revised RPPC regulations.

Regulation of postconsumer material issues are discussed further in proposed Subsection 17943(q).

❖ Reusable Rigid Plastic Packaging Containers

Throughout the rulemaking, several product manufacturers said that the revised RPPC regulations definition of reusable container was not consistent with statute. Many plastic processors and environmental groups said that the revised RPPC regulations are consistent with the intent to increase recycled content in RPPCs.

Two related issues arose with the previous version of the regulatory definition of "reusable package" which means "a rigid plastic packaging container which the Board determines is routinely reused by consumers at least five times to store the original product contained by the package." (14 CCR Section 17943(b)(27).)

First, it was unclear whether the term "original item" meant the exact same physical item that was originally sold in the RPPC, or if it might also include a replacement product of the same type that was originally stored in the RPPC. Examples of these types of item considered in relation to this issue would include concentrated detergents, cleaners, or paperclips.

Second, also related to the first issue, because of "original product contained" language, stakeholders claimed the reusable exemption for products permanently stored in a packaging container, to display or hold item or items over an extended period of time, where the item was not typically removed and returned to the package and the package was typically not refilled with replacement product,. Examples include collectable toys or artwork, CDs or DVDs sold on a spindle, staples, or paperclips. Product manufacturers are concerned that the proposed regulations change the definition of reuse to exclude containers that store the original product sold in the container.

A package is compliant under PRC 42310(c) if it is a reusable or refillable package. "Reusable Package" is defined in PRC Section 42301(d) as "a rigid plastic packaging container that the board determines is routinely reused by consumers at least five times to store the original product contained by the package.

The definition of a "Refillable package" under PRC Section 42301(c), means "a rigid plastic packaging container which the Board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product held by the package. For the purpose of this program, the product manufacturer or the product manufacturer's agent may refill a package."

The principal difference between the statutory definitions of “refillable package” and “reusable package” under the statute appears to be the party doing the refilling or reuse. Refillable packages are returned to and refilled by the product manufacturer; reusable containers are reused by consumers. In both packages, the refilling or reuse is done with the original product contained by the package.”

The Department proposes amending the definition of “reusable package” to “Reusable Rigid Plastic Packaging Container” which means “a rigid plastic packaging container that is routinely reused at least five times where the reuse is to hold a replacement product. A reusable rigid plastic packaging container does not refer to a container that is intended to be used or may be used to permanently hold the original product sold in that container.” (Proposed, 14 CCR Section 17943(z).)

Additionally, the Department seeks to define the term “Replacement Product” which “means a product that is sold by a product manufacturer with the intent to replenish the contents of the original rigid plastic packaging container sold by that same product manufacturer.” (Proposed, 14 CCR Section 17943(y).)

Regarding the first issue noted. Where the Legislature intended to exclude certain products, it did so explicitly (see PRC Section 42310.1) and it would be incorrect to imply an exclusion from this term used within a definition where there is no distinction in the packaging required for the same type of product sold to be used in the same container. There is nothing in the term “original product” that specifies that it doesn’t also include the same type of product that is sold with the intent of continuing to store it in the original RPPC – the potential impact on the solid waste stream would be the same.

Additionally, when determining what the term “original product” means under PRC Section 42301(d), it would seem logical to review how that might apply to the same term under PRC Section 42301(c). The Department concluded that it was unlikely that the legislature intended the definition of “Refillable package”, under PRC 42301(c), to require returning the exact physical item sold in that package, along with the RPPC, to the manufacturer, for refilling. Instead, the Department determined that the most likely meaning of the term “original product” under PRC Section 42301(c) would necessarily include replacement products. Based on this analysis, the Department defined “replacement product” under proposed regulation 14 CCR Section 17943(y). Therefore, the revised regulation is clarifying this issue by defining original product to also include both the product originally packaged in the RPPC and/or a replacement product as newly defined.

Regarding the second issue noted. The ambiguity regarding permanent or long-term storage of an original item (e.g. a collectable figure, almost never removed) or original set of items (e.g. a package containing 6 batteries, where the batteries can be removed one at a time) was a result of the ambiguity of the term “original product contained by the package”; based on the clarification provided above, the Department is better able to respond to this issue.

The Department felt it was necessary to explicitly note that a container used only to permanently hold the product did not meet the requirement of “reuse” under PRC Section 42301(d). The Department determined that if the “original product contained” is not removed and returned (including replacement products) to the RPPC at least five times, in addition to the original use,

it is not “reused by the consumers at least five times”, therefore, it’s package does not constitute a “reusable package” under the statute

This means that a package that is not designed to be opened and then reclosed could not constitute a “reusable package” because the item is not intended to be removed from the package and later returned. Additionally, items sold in containers that are not typically refilled, or used to store the original item (including replacement products) again after their use, would not constitute a RPPC. This means that manufacturers who have sought to comply through the reusable container option, who would now not qualify, would be required to comply through one of the other options.

Manufacturers are responsible for proving that they meet their chosen compliance option; a description of how to demonstrate compliance can be found in 14 CCR Section 17945.3(d)(6). If a manufacturer can provide data that demonstrates that a product (exact same item or a “replacement product”) is returned to the package at least four more times, then the manufacturer could seek compliance through the option proscribed under PRC Section 42301(d).

The alternative selected will likely not result in any instances of a container that would actually be reused less often, and will likely result in those containers complying through one of the other compliance options under PRC Section 42310, which should result in an increase in the use of postconsumer plastic resin, diverted from landfill.

Regulation of reusable rigid plastic packaging container issues are discussed further in proposed 14 CCR Section 17943 (z).

❖ Regulation of Almost Identical Containers

The definition of a RPPC was revised to include containers that are almost identical to regulated containers, but that are not currently regulated by the existing regulations. This regulatory inconsistency creates an inequitable regulatory environment. The previous version of the regulations excluded from regulation containers with non-plastic incidental components and containers which were heat or sonically sealed.

Plastic processors and environmental groups say that virtually identical containers excluded from the existing RPPC requirements should be included in the revised regulations and that plastic recycling and postconsumer resin has dramatically increased in the 20 years since the RPPC law went into effect.

Throughout the rulemaking, some product manufacturer representatives and some container manufacturers said that to add millions of additional containers (including heat sealed and containers not made entirely of plastic that will now be subject to the program) is contrary to the legislative intent to have a program that is manageable to implement. Some product and container manufacturers also claimed that there is not sufficient postconsumer resin to meet the revised RPPC requirements. Product manufacturers say the former CIWMB chose to limit the definition of containers covered by the RPPC regulations due to the ambiguity of the law and the foreseen problems as was explained in the 1994 Final Statement of Reasons. Product manufacturers say the former CIWMB continued to struggle with identifying containers and

product manufacturers, has received few completed certification forms from regulated manufacturers, and has proceeded with very few enforcement actions.

The 1994 Final Statement of Reasons for the original RPPC regulations (14 CCR Section 17943 (b)(30)) says a broad determination causes implementation problems and it is necessary to refine the definition of an RPPC. However, based on experience in RPPC certification cycles in the intervening years and the broad definition of an RPPC in Public Resources Code (PRC) Section 42301(f), the Department adopted revised regulations that still fall within the statutory definition. The proposed amendments are necessary to provide clarity and to create a level playing field that sets the same standards for almost identical containers that have the same landfill disposal impact and capacity for being source-reduced or made of postconsumer materials with a slightly different design.

Only plastic containers made completely out of plastic resin are currently regulated. Containers with metal handles attached are currently not regulated, while the same container without a handle, or with a plastic handle attached, is regulated. Thus, companies using unregulated containers with metal handles have not been required to certify that they are compliant under one of the compliance options enumerated under PRC Section 42310, and therefore, receive a competitive advantage over companies using regulated containers by avoiding costs associated with RPPC compliant containers.

The proposed regulations correct this oversight and create a more equitable regulatory environment for all product manufacturers using similar containers.

This change is consistent with the statutory definition of an RPPC in PRC Subsection 42301(f).

Another inconsistency in the current definition of an RPPC which allows companies using almost identical non-regulated packaging to gain a competitive advantage over companies using similar regulated packaging, is whether or not the container is capable of multiple re-closures. Although Statute does not limit RPPCs to packaging that is capable of re-closure (PRC Subsection 42301(f)), existing regulations only regulate containers capable of multiple re-closure, thus exempting identical containers which are heat or sonically sealed. Therefore, to address this inconsistency, the proposed regulatory definition of a RPPC is revised from "capable of multiple re-closure" to "capable of at least one closure." Containers without a lid, such as a nursery pot, remain outside the definition of an RPPC.

The Economic and Fiscal Impact Study indicates that, combined, all of the containers impacted by the amended regulations use 100.1 million pounds of resin. Only 17.76 million pounds of postconsumer material is needed for manufacturers to comply with the amendments. For California-based manufacturers only 4.4 million pounds of postconsumer material is needed. According to the Beverage Container Sales and Recycling Data, Californians recycled 426.5 million pounds of beverage containers in 2010. The American Chemistry Council and the Association of Postconsumer Plastic Recyclers' 2010 United States National Post-consumer Plastics Bottle Recycling Report, states that 2.58 billion pounds of plastic bottles were recycled in the United States. Nearly 99 percent of the recycled bottles are PET and HDPE resin types. The proportion of PCM needed for the containers added by the revisions in the RPPC regulations is a small portion of recycled resin available. See also the Reasonable Alternatives to the Proposed Regulatory Action, Availability of Postconsumer Material section immediately below this section.

Regulating the additional containers will result in an increase in the environmental benefits from this program, generally increasing the use of postconsumer material, increasing the recyclability of regulated RPPCs, and/or extending the useful life of containers containing virgin resins. These containers are required, by statute, to comply and the Department has not identified any less burdensome alternative.

Regulation of almost identical container issues are further discussed under 14 CCR Section 17943 (aa).

❖ Availability of Postconsumer Material

Several product manufacturers and stakeholders have asserted that there is an insufficient amount of postconsumer material to meet the 25 percent postconsumer requirement for the approximately 357 million buckets, pails, clamshells and similar containers, weighing a total of 76.87 million pounds, that the adopted revised regulations define as RPPCs and must meet one of the five compliance mandates (Public Resource Code (PRC) section 42310 or the alternative compliance mandate (PRC section 42310.3). In addition, 118 million RPPCs (weighing 13.97 million pounds) would no longer be allowed to substitute post-industrial material for the required postconsumer resin. Finally, manufacturers of another 118 million RPPCs (weighing 13.97 million pounds) are expected to achieve compliance through the alternative compliance method.

The purpose of this section is to evaluate the amount of postconsumer material that will be needed by product manufacturers to meet the requirements of the adopted revised regulations and to assess the availability of postconsumer material in both California and the United States. It does not address the availability of postconsumer material used by product manufacturers to achieve compliance for RPPCs that are not impacted by the revised regulations. The adopted revised regulations revised the RPPC definition; prohibits substituting post-industrial for postconsumer material to achieve compliance and allows product manufacturers under the same corporate ownership to offset non-compliant RPPCs using California-generated postconsumer material in other products (alternative compliance method). The amount of postconsumer material needed was determined from data used by the Department to prepare the Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations. That analysis relied on the Department's 2004 Statewide Waste Characterization Study for estimates of the amount of RPPCs used in California.

It must be noted that California's RPPC law only applies to RPPCs sold or offered for sale within the state's boundaries. Some product and container manufacturers want to base postconsumer material availability on containers sold throughout the United States.

This evaluation summarizes the limited amount of publically available information of the amount of RPPC used in California and the United States and the amount of postconsumer material that is available. The lack of publically available data has been a long-term issue. The Department does not have access to very much data on postconsumer material recycling and availability. Most of the data is confidential and access to it could give competitors an economic advantage. Plastic bucket and pail manufacturers also say that the quality or type postconsumer material that they need (for example, injection grade homo-polymer rather than Blow Mold co-polymer HDPE, different melt indexes, the additives and fillers are not compatible, etc.) is not available. There is no way for the Department to verify these claims, because such detailed data does not

exist in the aggregated data that is publically available and the data was not provided by the stakeholders during the rulemaking.

As an example of long-term data availability, the Department was required from 1995 until 2004 to annually calculate the rate at which RPPCs were recycled in California (PRC section 42324). While, the concept of a RPPC recycling rate appeared to be relatively easy, the actual calculations were quite complex and often tortuous. The Department had to rely on constantly changing external and disparate data sources and definitions. For example, national resin sales data was used as an estimator of the amount of resin used to manufacture RPPCs and the weight of the RPPCs themselves. This data was provided by four different sources and two of the sources included Canada in the sales data. Only one source, which was used for 1995 and 1996, included all seven resin types. Due to issues of lack of needed resin sales data and constant shifts in the method of calculation made year-to-year recycling rate comparisons difficult. Therefore, the Legislature repealed the recycling rate requirement.

Tables 1 and 2 present the amount of RPPCs used in California and the amount of needed postconsumer material for each of the 10 RPPCs categories in the Detailed Economic and Financial Impact Analysis of Amendments. Table 3 and 4 compare the needed postconsumer material with the amount of postconsumer material available in the United States and California. The definitions of container and resin types in the available postconsumer material and resin sales information was not consistent with the Department's ten RPPC categories. The estimation of the United States production of RPPCs in Table 5 is compiled from several different data sources and may understate the amount of PET RPPC produced and overstate the amount of '3 through 7' RPPCs.

Finally, the Department's analysis for this document shows that there is a sufficient supply of postconsumer material in both California and United States to meet the product manufacturer compliance requirements created by the adopted revised regulations. The revised regulations require manufacturers to acquire about 18.51 million pounds of postconsumer material. For California-based manufacturers are estimated to need about 4.6 million pounds. This is far less than one percent (emphasis added) of available recycled material. This determination is based on a review of the limited amount of publically available information on the production of RPPCs and the amount of recycled postconsumer material in California and the United States.

The RPPC Law only Applies Products in RPPCs to Sold or Offered for Sale in California:

The RPPC law (PRC section 42300 et seq) only regulates RPPCs sold or offered for sale in California. While, manufacturers can (and probably do) sell products in other states whose use packaging meets California RPPC standards, they are not required to do so by California law or regulations.

The federal government through the Food, Drug and Cosmetics Act (21 USC 301 et seq); Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.); and 49 CFR 105 et seq (the shipment of hazardous materials) has pre-empted state regulations of the design of certain RPPCs. As stated earlier, these RPPCs (see Table 1), which are exempt from the compliance mandates comprise, more than two-thirds of all RPPCs in California. The RPPC law does not directly regulate the manufacturers (NAICS #326160) of containers, but rather the business ("product manufacturer") who decides the product that is placed into the container. An identical container may or may not be subject to the compliance requirements depending on the specific product inside the container.

The law allows product manufacturers to use one or more options to demonstrate their RPPCs are in compliance. The use of postconsumer material is the most common method of compliance with about 55 percent of all RPPCs. The source reduction option is used for about 40 percent of RPPCs. The reuse or refill options account for the remaining 5 percent. Three other states—New Jersey, Oregon and Wisconsin—have RPPC laws.

A Small Amount of Postconsumer Material is Needed by Product Manufacturers to Achieve Compliance:

The Department in the approved Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations, August 2010 (also referred to as the Economic and Fiscal Impact Study), estimated that the revised definition of a RPPC in the adopted revised regulations adds an additional 357.2 million RPPCs with a total weight of approximately 76.87 million pounds (see Table 1, column 2) that will be subject to one of the product manufacturer compliance requirements in California. With this expansion of RPPCs, the Department estimates California residents and businesses use a total of 3.94 billion (465.5 million pounds) RPPCs annually. There are, also, 9.08 billion RPPCs (1.02 billion pounds) that are exempt from the compliance requirements. These are containers that must comply with federal statutes for the packaging of foods, drugs, cosmetics, medical devices, pesticides, or dangerous or hazardous products subject to the US Department of Transportation and/or United Nations shipping regulations. The exempt product group also includes 5.79 billion (614 million pounds) of California Redemption Value (CRV) beverage containers.

Table 1 presents a summary of the RPPCs used in California based on the ten (10) categories of RPPCs that the Department's identified in its 2004 Statewide Waste Characterization Study. Resin types 3 through 7 were aggregated in the 2004 study to develop statistically representative samples for bottles, clamshells and other (e.g., jars, buckets, pails, etc.) containers.

The largest group of newly regulated RPPCs (column 3) is the approximately 21.6 million buckets, pails, tubs, etc. made with HDPE resin. The total weight of this group of RPPCs is estimated at 47.56 million pounds. The 335.6 million clamshells have a total container weight of 29.3 million pounds.

Table 1 Estimated Weight of Rigid Plastic Packaging Containers Used in California, 2010 (millions of pounds)			
Container Resin Type (column 1)	Weight of Regulated RPPCs Before Adoption of Revised Regulations (column 2)	Weight of Newly Regulated RPPCs (column 3)	Weight of Exempt RPPCs including CRV Beverage Containers (column 4)
PET Bottles	157.2	0.0	157.2
PET Clamshells	1.7	9.66	7.6
PET Other RPPCs	22.8	0.0	15.2
PET CRV Beverage	0.0	0.0	551
Total PET (#1)	181.7	9.66	731
HDPE Natural Bottles ²	70.5	0.0	57.7
HDPE Pigmented Bottles ²	79.0	0.0	38.9
HDPE Other RPPCs	14.7	0.0	2.6
HDPE Pails, Tubs, etc ³	5.5	47.56	79.3
HDPE CRV Beverage	0.0	0.0	56.0
Total HDPE (#2)	169.5	47.56	234.5
3--7 Bottles	6.5	0.0	13.5
3--7 Clamshells	1.0	19.65	31.0
3--7 Other RPPCs	30.0	0.0	14.8
#3--#7CRV Beverage	0.0	0.0	7.0
Total #3--#7	37.5	19.65	59.3
Total Non-CRV RPPCs	388.6	76.87	410.7
Total CRV Beverage	0.0	0.0	614.0
All RPPCs	388.6	76.87	1,024.7
Total Number of RPPCs (millions)	3,943.5	357.2	9,078.6
Sources:			
<ul style="list-style-type: none"> • <u>Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations</u>, Department of Resources Recycling and Recovery, August 2010. • <u>Calendar Year 2010 Report of Beverage Container Sales, Returns, Redemption, & Recycling Rates</u>, Department of Resources Recycling and Recovery, July 2011. 			

Table 2, below, identifies the amounts of postconsumer material that will be needed by all manufacturers and California manufacturers to achieve compliance with the revised regulations. The Department estimates that a total of 18.51 million pounds (column 5) of post-consumer material will be needed by all manufacturers to comply with the requirements of the adopted revised regulations. California-based manufacturers (column 6) will need to acquire 4.44 million pounds of postconsumer material. It should be noted that the 11.53 million pounds of postconsumer material for the newly regulated RPPCs (column 2) is calculated based on the

assumption 40 percent of these RPPCs will comply through the source reduction option. Nearly one-half (7.93 million pounds) of the postconsumer material will be needed by manufacturers of buckets, pails, and tubs which have a metal handle that was attached after manufacture of the containers. As shown for column 3, about 3.49 million pounds of postconsumer material will be needed to replace post-industrial material which has been substituted for postconsumer material in an estimated 118 million containers.

An additional 3.5 million pounds (column 4) of California-generated postconsumer plastic material including film and durable/rigid is expected to be used by manufacturers in non-RPPC products to offset non-compliance of about 118 million RPPCs. Public Resources Code section 42310.3 was added by Senate Bill 743 (Chapter 666, Stats of 2005) in 2005 to allow manufacturers under the same corporate-ownership to achieve compliance by using the California postconsumer material nonequivalent to 25 percent of the weight of non-compliant RPPCs. The manufacturers using this material may be located outside of California.

Container Resin Type (column 1)	Newly Regulated RPPCs (column 2)	Replacement of Post-industrial Material (column 3)	Alternative Compliance Method (column 4)	Total Postconsumer Material Needed for Compliance	
				All Manufacturers (column 5)	All California-based Manufacturers (column 6)
PET Bottles	0.0	1.18	1.18	2.36	0.59
PET Other RPPCs	0.0	0.17	0.17	0.34	0.08
PET Clamshells	1.45	0.09	0.09	1.63	0.41
Total PET (#1) RPPCs	1.45	1.44	1.44	4.33	1.08
HDPE Natural Bottles	0.0	0.53	0.53	1.06	0.26
HDPE Pigmented Bottles	0.0	0.59	0.59	1.18	0.30
HDPE Other RPPCs	0.0	0.11	0.11	0.22	0.06
HDPE Pails, Tubs, etc	7.13	0.40	0.40	7.93	1.98
Total HDPE (#2) RPPCs	7.13	1.63	1.63	10.39	2.60
3--7 Bottles	0.0	0.05	0.05	0.1	0.02
3--7 Other RPPCs	0.0	0.22	0.22	0.44	0.11
3--7 Clamshells	2.95	0.16	0.16	3.27	0.82
Total #3--#7 RPPCs	2.95	0.43	0.43	3.81	0.95
Total RPPCs	11.53	3.49	3.49	18.51	4.63
Source:					
<ul style="list-style-type: none"> • <u>Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations</u>, Department of Resources Recycling and Recovery, August 2010. 					

There is a Sufficient Amount of Postconsumer Material Available for Manufacturers to Achieve Compliance:

Table 3 presents the recycling of bottle and non-bottle rigid plastic and the amount of postconsumer material needed by manufacturers for compliance with the revised regulations. The postconsumer material needed for manufacturers to comply with the adopted revised regulations is about 0.61 percent of the more than 3 billion pounds of recycled plastic in the United States (and Canada).

The Association of Postconsumer Plastic Recyclers (APR) and the American Chemistry Council produce annual reports on the recycling of plastic bottles in the United States. For 2010, 2.58 billion pounds of plastic bottles (column 2) were recycled in the United States (and Canada). The total includes nearly one billion pounds of HDPE bottle—the postconsumer feedstock for the newly regulated buckets, pails, tubs, etc. Separately, the American Chemistry Council reports that 476 million pounds of non-bottle rigid plastic were recycled in 2010. In contrast with bottle recycling, the HDPE and ‘3 through 7’ resins account for 68 percent of the non-bottle rigid plastics total (column 3).

The appendix, below, presents a summary of amount of postconsumer material from the recycling of plastic bottles and non-bottle rigid plastic both California and for the United States for the past five years.

There is a significant amount of postconsumer bottle and non-bottle “rigid” material that is exported to foreign countries. In 2010, about 984 million pounds of recycled bottles were exported out of the United States. About 50 million pounds were exported to Canada. Most of the rest was exported to China. The non-bottle exports increased to 351 million pounds in 2010. This is more than 40 percent of all recycled non-bottle rigid plastic. The demand for additional postconsumer recycled plastic in California and the United States could reduce the amount being exported. For example, the amount of polypropylene bottles exported has dropped by at least 50 percent in the past 3 years due to increased domestic usage.

TABLE 3
Comparison of Estimated Postconsumer Material Available in the United States and Needed by All Manufacturers for Compliance with Adopted Revised Regulations
(Millions of Pounds)

Container Resin Type (column 1)	Plastic Bottles Recycled in United States: 2010 (column 2)	Non-Bottle Rigid Plastic Recycled in United States: 2010 (column 3)	Postconsumer Material for Newly Regulated RPPCs (column 4)	Total of Postconsumer Material Needed for Compliance (column 5)	Postconsumer Material as Percentage of Recycled Plastic Bottles and Non-Bottle Rigid Plastic (column 6)
PET (#1)	1,557	16.3	1.45	4.33	0.28 %
HDPE (#2)	984	137.5	7.13	10.39	0.93 %
PVC (#3)	1.4	5.9			
LDPE (#4)	1	10.3			
PP (#5)	35	209.2			
PS (#6)	NR	15.0			
Other/Mixed (#7)	NR	81.7			
Sub-total All 3—7 Resins	38	322.0	2.94	3.81	1.06 %
Total All Resin Types	2,579	475.8	11.53	18.51	0.61 %

NR: Bottles not Reported for PS and Other/Mixed Resins.

Sources:

- Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations, Department of Resources Recycling and Recovery, 2010.
- 2010 United States National Postconsumer Plastics Bottle Recycling Report, American Chemistry Council, Association of Postconsumer Plastic Recyclers, 2011
- 2010 National Report on Postconsumer Non-Bottle Rigid Plastic Recycling, American Chemistry Council, prepared by Moore Recycling, Inc., 2012

Table 4 provides similar data for postconsumer material available in California. While, neither of the national studies provides data on recycling in California or any other state, the Department collects and publishes data on the recycling of plastic beverage containers in California. During 2010, (Table 4, also see Table 10, below) Californians recycled 426.5 million pounds of plastic California Redemption Value (CRV) beverage containers. California-based manufacturers are expected to need about 4.64 million pounds of postconsumer material to achieve compliance. This amounts to approximately 1.09 percent of the plastic beverage containers recycled in California.

The 3.81 million pounds of resin types '3 through 7' (Table 3, column 5) that is required for RPPC compliance is less than 4 percent of the 100 million pounds of available postconsumer polypropylene let alone the amount of other recycled '3 through '7 resins. A bucket/pail manufacturer provided testimony at the October 2011 workshop that other resins types could be substituted for the primary resin without harming container performance. [See Response to Comment L-05-03.]

Plastic bucket and pail manufacturers also say that the quality or type of postconsumer material that they need (for example, injection grade homo-polymer rather than Blow Mold co-polymer HDPE, different melt indexes, the additives and fillers are not compatible, etc.) is not available. Much of this information is specific to an individual RPPC manufacturer's process(es) and is confidential, proprietary or a trade secret. There is no way for the Department to verify these claims, because such detailed data does not exist in the aggregated data publically available and was not provided by stakeholders during rulemaking.

Container Resin Type (column 1)	CRV RPPCs Sold (column 2)	CRV RPPCs Recycled (column 3)	Postconsumer Material for Newly Regulated RPPCs (column 4)	Total of Postconsumer Material Needed for Compliance (column 5)	Postconsumer Material as Percentage of CRVs Recycled (column 6)
PET (#1)	551.21	374.61	0.36	1.08	0.29 %
HDPE (#2)	55.67	51.23	1.78	2.60	5.07 %
PVC (#3)	0.08	0.0001			
LDPE (#4)	0.46	0.0035			
PP (#5)	0.22	0.01			
PS (#6)	0.51	0.04			
Other/Mixed (#7)	5.85	0.61			
Sub-total All 3—7 Resins	7.11	0.66	0.74	0.95	144.39 %
Total All Resin Types	614.00	426.50	2.88	4.63	1.09 %
Sources:					
<ul style="list-style-type: none"> • <u>Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations</u>, Department of Resources Recycling and Recovery, 2010. • <u>Calendar Year 2010 Report of Beverage Container Sales, Returns, Redemption, & Recycling Rates</u>, Department of Resources Recycling and Recovery, July 2011 					

RPPC and Resin Sales and Uses, 2007—2010:

Another important component in the determination of postconsumer material availability is the amount of resin used to produce RPPCs. The production of RPPCs provides the basic feedstock for postconsumer material to produce RPPCs with postconsumer content. The resins define the basic chemical and physical properties that the postconsumer material must have.

Aside from Department's estimations in the Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations and this assessment of the availability of postconsumer material, there is no compilation of the amount of RPPCs used in California or the United States. Table 5, which was developed from the limited publically available data, provides an estimate of United States production of RPPCs based on resin sales from several different sources. The Table indicates that about 10.6 billion pounds of RPPCs are produced in the United States and about 1.5 billion pounds of RPPCs including 614 million

pounds of California-Redemption Value (CRV) beverage containers are used in California each year. For both the United States and California more than 90 percent of the listed containers are PET and HDPE containers. For a variety of reasons including the collapse of the international financial markets in 2008, the reduced weight of plastic bottles and other RPPCs, plastic resin sales and use in the United States declined from 2007 through 2010. As shown in Table 5, national production of RPPCs appears to have declined by 8 percent. Resin sales data compiled by the American Chemistry Council for the resins used to make RPPCs declined by about 5 percent.

The data rows with a footnote ³ are from the March 2008 Monthly Resin Production Report of the American Chemistry Council's Plastic Industry Producers' Statistics Group. The 2007 and 2008 annual figures are annualized values based on the first quarter. The figures may overstate actual production because of the decline in bottle and overall resin production discussed below. The 2009 and 2010 values were extrapolated by the Department based on changes in annual production of plastic packaging published by the ACC for 2009 and 2010. The national beverage container data was estimated by pro-rating the Department's beverage container sales data based on the ratio of California to United States population. California to United States population ratios was used by the Department to estimate California generation of RPPCs from national resin sales data in the calculation of the statutorily mandated PET and All-Container Recycling Rates.

For four of the Department's RPPC categories-- PET clamshells, PET Other RPPCs (jars, jugs, pails, etc), HDPE Other RPPCs (jars, boxes, etc) and '3 through 7' clamshells (red font with blue shading in Table 5)--no resin sales data could be obtained. This lack of data means that the national totals shown for PET probably underestimate of the amount of PET RPPCs produced and consumed. Some of the categories shown (for example PS RPPCs) include non-RPPC uses such that the actual amount of RPPCs is overstated. However, the recycling of products made from those resins could provide postconsumer feedstock meeting RPPC manufacturer needs.

There are some categories that get aggregated because the specific data is confidential and disclosure would identify the specific producer(s) and their resin usage. The aggregated category may include products that are not containers let alone RPPCs.

Despite the under and over counting problems, the Department believes that the table provides as accurate an estimate of the national use of RPPCs as can be compiled with the limited data publically available without conducting very expensive industry surveys. Such surveys are not required by statute and could cost several hundred thousand dollars.

Plastic Resin and Container Type	2007	2008	2009	2010
PET Bottles * ¹	5,683	5,366	5,149	5,350
PET Other RPPCs*				
PET Clamshells*				
PET Beverage**	4,581	4,730	4,502	4,426
Total PET (#1) RPPCs	5,683	5,366	5,149	5,350
HDPE Natural Bottles* ²	1,654	1,523	1,613	1,604
HDPE Pigmented Bottles* ²	1,886	1,713	1,752	1,682
HDPE Other RPPCs*				
HDPE Pails, Tubs, etc* ³	1,551	1,340	1,194	1,361
HDPE Beverage**	468	418	403	409
Total HDPE (#2) RPPCs	5,091	4,576	4,759	4,647
PVC Bottles ³	85	71	65	67
PVC Other RPPCs including Clamshells ³	121	106	97	100
Total PVC ³	206	177	162	167
LDPE Bottles ³	67	69	71	55
PP Bottles ³	200	184	190	191
PP Other RPPCs including Clamshells ³	51	31	32	33
Total PP ³	251	215	222	224
Total PP ³	231	208	202	217
PS RPPCs ³	NR	NR	NR	NR
Other	352	325	327	314
3--7 Bottles* ¹	404	346	332	349
3--7 Other RPPCs* ³				
3--7 Clamshells*	80	73	60	77
3--7 Beverage**	756	671	659	663
Total #3--#7 RPPCs				
Total RPPCs	11,530	10,613	10,566	10,660
<ul style="list-style-type: none"> • * RPPC Categories in <u>Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations.</u> • ** DRRR Beverage Container Sales for California; extrapolated for United States • ¹ National Association for Postconsumer Container Resources; Annual Report • ² Association of Postconsumer Plastic Recyclers and American Chemistry Council; Annual Reports • ³ Plastics Industry Producers' Statistics Group, compiles by Veris Consulting, LLC 				

Lack of Publically Available Data on Production and Recycling of RPPCs:

As stated earlier there is no publically available data on the actual number and weight of RPPCs sold in either California or the United States. The Department in the Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations and this analysis has provided estimated of the amount of RPPCs used in the California and the United States. The Department knows of no non-public (i.e., private) databases of RPPCs sold and/or recycled.

The Department in preparing the Detailed Economic and Financial Impact Analysis of Amendments to the Rigid Plastic Packaging Container Regulations estimated the amount of non-CRV RPPCs disposed in California. The estimation was based on its 2004 Statewide Waste Characterization Study, which used ten (10) categories of RPPCs. To develop statistically representative samples for the 2004 study, RPPCs for resin types '3 through 7' RPPCs were aggregated into 3 categories: bottles, clamshells and other (e.g., jars, buckets, pails, etc.) containers. Waste characterization studies were used by the department for determining the PRC section 42324 mandated RPPC "All-Container" Recycling Rate starting in 1995. The department also tried estimating the amount of RPPCs generated in California from national resin sales data provided by industry organizations or trade publications.

Table 5 (Resin Used for RPPCs Produced in the United States) was developed from publically available reports of the National Association of PET Container Resources, the Association of Postconsumer Plastic Recyclers and the American Chemistry Council and from the March 2008 Monthly Resin Production Report of the American Chemistry Council's Plastic Industry Producers' Statistics Group. The monthly and annual resin sales and use reports are normally only available to the Council members and paid subscribers. The March 2008 monthly report can be found by searching the worldwide web.

The recycling data in all of the Tables was compiled from a limited amount of publically available data. The recycling and production data is initially compiled through private surveys of industry members who are understandably concerned about disclosing confidential or proprietary information.

PET and All-Container RPPC Recycling Rate Calculation Process:

Between 1995 and the 2004 repeal of Public Resources Code section 42324, the Department was required to calculate and publish annual recycling rates for all RPPCs ("All-Container" Recycling Rate) and those RPPCs made with PET resin ("PET" Recycling Rate). If the All-Container Recycling Rate was 25 percent (or greater) all product manufacturers could use the rate to demonstrate compliance with the law. If the PET Recycling Rate was 55 percent (or greater) manufacturers could use that rate to demonstrate compliance for their PET RPPCs. PRC section 42324 required the Department to conduct a public hearing before April 1, 1994 on the adequacy of the recycling rate method used to calculate the base rate for measure compliance with the manufacturer compliance standards in PRC section 42310, and determining if the recycling rate is the most accurate method feasible to calculate the recycling rate for RPPCs. It was determined that the proposed methodology which was used for the initial 1995 recycling rate calculation was adequate.

While, the basic recycling rate methodology was relatively simple, the actual calculation of the rates was extremely difficult and often tortuous. The basic equation was the amount (measured in tons) of RPPCs recycled in the year divided by the amount of RPPCs generated. The

denominator was determined by adding the amount of RPPC disposed and the amount recycled.

$$\text{Recycling Rate} = \text{Weight of RPPCs Recycled} \div (\text{Weight of RPPCs disposed} + \text{Weight of RPPCs Recycled})$$

The amount of RPPCs recycled, with the exception of the 1995 PET Recycling Rate, was determined by annual surveys (“processor survey”) of approximately 250 plastic recyclers and processors (business that prepare recycled material for reuse). With the exception of the 1995 All-Container Rate, more than 99 percent of the recyclers and processors responded to the surveys. The 1995 PET Recycling Rate was calculated using the Department’s CRV recycling data.

While, the amount of RPPCs that were recycled was fairly easy to calculate, the annual estimation of RPPCs actually disposed was constantly changing due to the limited and disparate data. Every year at least one change in the methodology and/or data sources was necessary to calculate a rate. The statewide waste characterization studies provided statistical estimates at a 90 percent confidence level of the amount of RPPC disposed. The 1995 study was used for the 1995, 1996 and 1997 rates. The 1999 study was used for 1998 through 2003). National Resin Sales data was used to estimate the weight of RPPC used in the United States. This data was also limited as described in the sections above. The national figures were then pro-rated for California based on the ratios of California to United States population and retail sales. The trade publication *Modern Plastics* was the source for the 1995 and 1996 calculations. The *Society of the Plastics Industry* (SPI) provided the 1997 and 1998 national resin sales data for resin types 2 through 7. The National Association for PET Container Resources (NAPCOR) provided the PET resin sales data after 1997. Starting with the 1999 Recycling Rates the American Plastics Council (APC, now a division of the American Chemistry Council (ACC)) provided the non-PET resin sales data. The APC data included Canada as part of the United States resin sales and use data.

Another problem that arose was the timeliness of the data. The national resin sales data series published in January issues of *Modern Plastics* had actual data for the first 9 months of a year and an estimate of the fourth quarter. The national resin sales data from NAPCOR and APC was not compiled before the second quarter of the following year.

In responding to product manufacturer complaints that the recycling rates were calculated one or two calendar years after the year for which manufacturers potentially had to demonstrate compliance, the Department in 2001 shifted to calculating the recycling rate for a given year before July 1 of that year. As a result of the policy change and the lack of timely data, the Department did calculate 2002 recycling rates. The final recycling rates were adopted in June 2004 based on 2003 national resin sales data.

Senate Bill 1729 (Chapter 561, Stats of 2004) repealed the mandated recycling rate determinations because experience over time showed that the methodology was not adequate to handle the lack of consistent or timely disposal and resin sales data to estimate the weight of RPPCs used in California.

Table 6 Summary of PET and All-Container Recycling Rates Calculation Methods, 1995-2003				
Year	PET Recycling Rate		All Container Recycling Rate	
	RPPCs Recycled	RPPCs Disposed	RPPCs Recycled	RPPCs Disposed
1995	CRV RPPCS Recycled	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • 1995 Waste Characterization Study • Solid Waste Disposed
1996 & 1997	Processor Survey	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • Pro-Rated National Resin Sales
1998	Processor Survey	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • 1999 Waste Characterization Study • Pro-Rated National Resin Sales
1999	Processor Survey	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • 1999 Waste Characterization Study • Pro-Rated National Resin Sales
2000 & 2001	Processor Survey	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • 1999 Waste Characterization Study • Pro-Rated National Resin Sales
2001	Processor Survey	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • 1999 Waste Characterization Study • Pro-Rated National Resin Sales
2002	Recycling Rates Not Calculated			
2003	Processor Survey	Pro-Rated National Resin Sales	Processor Survey	<ul style="list-style-type: none"> • 1999 Waste Characterization Study • Pro-Rated National Resin Sales

Summary and Conclusion:

The adopted revised RPPC regulations increase the number of regulated RPPCs by 357 million to 3.94 billion. Another 118 million RPPCs will no longer be able to substitute post-industrial material for postconsumer material and manufacturers of another 118 million RPPCs will be to achieve compliance through the use of California postconsumer material in other products. These changes will require manufacturers to acquire about 17.78 million pounds of postconsumer material. In 2010, 2.58 billion pounds of postconsumer bottles and 476 million

pounds of non-bottle “rigid” plastic were recycled in the United States (and Canada). Californians recycled about 425 million pounds of plastic beverage containers.

The amount of postconsumer material needed by manufacturers to achieve compliance is estimated as 0.58 percent on the national supply and 1.04 percent of the California supply.

In conclusion, the Department has demonstrated that there is a more than sufficient supply of available postconsumer material to meet the needs of RPPC manufacturers.

Appendix of Background and Additional Historical Data Used:

This Appendix provides the background and additional historical data used to prepare this assessment of the available supply of postconsumer material that manufacturers could use to achieve compliance with the adopted revised regulations.

Supply of Postconsumer Plastic Bottles from 2006 to 2010:

The Association of Post-consumer Plastic Recyclers and the American Chemistry Council produce annual reports on the recycling of plastic bottles in the United States. Table 7 summarizes the plastic bottle recycling for calendar years 2006 through 2010. In 2010, 2,579 million pounds of plastic bottles were recycled, an increase of 16.3 percent from 2006. While, HDPE bottle recycling has remained fairly constant (a 6 percent increase), the amount of PET bottles recycled rose by 22 percent and polypropylene (PP) bottles by 92 percent.

Table 7
Plastic Bottles Recycled in Calendar Years 2006—2010
(millions of pounds)

Plastic Bottle Resin Type	2006	2007	2008	2009	2010
PET (#1)	1,272	1,396	1,451	1,444	1,557
PET Recycling Rate	23.4	24.6	27.0	28.0	29.1
HDPE Natural (#2)	454.4	410.2	430.4	457.0	434.1
HDPE Pigmented (#2)	473.7	510.4	506.3	524.6	550.0
HDPE Recycling Rate	26.4	26.0	28.9	29.2	29.9
PVC (#3)	0.8	0.4	0.4	2.0	1.4
LDPE (#4)	0.3	0.3	0.4	1.4	1.0
PP (#5)	18.4	17.6	21.2	27.0	35.4
PS (#6)	NR	NR	NR	NR	NR
Other/Mixed (#7)	NR	NR	NR	NR	NR
Total #3--#7	19.5	18.3	22.0	30.4	37.8
#3-#7 Recycling Rate	5.0	5.1	6.7	9.5	13.0
Total Bottles	2,220	2,335	2,410	2,456	2,579
Total Bottle Recycling Rate	23.8	20.9	23.4	24.0	25.0

NR: The recycling of PS and Other/Mixed bottles is not reported.

Sources:

- [2010 United States National Postconsumer Plastics Bottle Recycling Report](#), American Chemistry Council, Association of Postconsumer Plastic Recyclers, 2011
- [2009 United States National Postconsumer Plastics Bottle Recycling Report](#), American Chemistry Council, Association of Postconsumer Plastic Recyclers, 2010
- [2008 United States National Postconsumer Plastics Bottle Recycling Report](#), American Chemistry Council, Association of Postconsumer Plastic Recyclers, 2009
- [2007 United States National Postconsumer Plastics Bottle Recycling Report](#), American Chemistry Council, Association of Postconsumer Plastic Recyclers, 2009

Supply of Postconsumer Non-Bottle Rigid Plastic:

Starting with calendar year 2007, Moore Recycling Associates, Inc. has compiled for the American Chemistry Council annual reports on the recycling on non-bottle rigid plastic containers in the United States. The data includes material recycled in Canada. The reports do not provide data for individual states. Non-Bottle rigid containers include the newly regulated RPPCs of buckets, pails, tubs, and clamshells. Over the three years both the amounts of non-bottle rigid recovered and recycled into new products in the United States (and Canada) has increased by 390 percent. In contrast to plastic bottle recycling where PET was the dominant resin type, the recycled non-bottle rigid plastic is primarily HDPE and PP.

	2007	2008	2009	2010
PET	2.4	8.9	11.0	28.3
HDPE	53.4	85.0	83.1	238.8
PVC	2.4	4.5	3.4	10.2
LDPE	2.4	2.2	6.5	17.9
PP	46.1	55.9	65.2	363.4
PS	2.4	11.2	9.6	26.0
Other/Mixed	12.1	55.9	64.4	142.0
Total 3—7 resins	65.6	129.7	149.1	559.5
Total	121.1	223.6	243.1	826.7
Exported	204.0	137.1	236.1	350.9
Total Recovered	325.4	360.8	479.2	826.7

Sources:

- 2010 National Report on Postconsumer Non-Bottle Rigid Plastic Recycling, American Chemistry Council, prepared by Moore Recycling, Inc. 2012
- 2009 National Report on Postconsumer Non-Bottle Rigid Plastic Recycling, American Chemistry Council, prepared by Moore Recycling, Inc. 2011
- 2008 National Report on Postconsumer Non-Bottle Rigid Plastic Recycling, American Chemistry Council, prepared by Moore Recycling, Inc. 2010
- 2007 National Report on Postconsumer Non-Bottle Rigid Plastic Recycling, American Chemistry Council, prepared by Moore Recycling, Inc. 2009

State Beverage Container Recycling Laws:

California and ten other states have beverage container deposit and redemption programs. The Territory of Guam started its program on January 1, 2011. On December 31, 2010 Delaware replaced its 5 cent per container deposit and refund program with a 4 cent per container fee.

State (Territory)	Container Resin Types	State (Territory)	Container Resin Types
California	All Resins	Connecticut	HDPE Excluded
Hawaii	PET, HDPE only	Iowa	All Resins
Maine	All Resins	Michigan	All Resins
New York	All Resins	Oregon	All Resins
Massachusetts	All Resins, excludes biodegradable containers	Vermont	All Resins excludes biodegradable containers
Guam	All Resins	Delaware (Fee Program)	All Resins

Except for California, there is very little publically available data on the amount of beverage containers sold and recycled in each of the states. Table 10 presents a summary of the amount

of plastic beverage containers recycled in California from 2006 through 2010. During 2010 Californians recycled 5.79 billion (426.5 million pounds) of beverage containers. This was an increase of 1.9 billion containers (100 million pounds) from the 2006 value.

	2006	2007	2008	2009	2010
PET	284.7	330.4	374.8	414.2	377.9
HDPE	38.8	43.5	51.8	55.9	46.5
PVC	0.03	0.08	0.008	0.0002	0.00001
LDPE	0.004	0.002	0.0004	0.0002	0.0001
PP	0.008	0.004	0.004	0.009	0.008
PS	0.06	0.02	0.01	0.005	0.004
Other/Mixed	0.6	0.7	0.5	0.3	0.2
Total 3—7 resins	0.2	0.4	0.5	0.7	0.7
Total	323.7	374.3	427.2	470.8	425.1
Total Number of Containers (billions)	5.79	6.37	5.64	4.79	3.86

Sources:

- Calendar Year 2010 Report of Beverage Container Sales, Returns, Redemption, & Recycling Rates, Department of Resources Recycling and Recovery, July 2011.
- Fact Sheet California's Beverage Container Recycling & Litter Reduction Program, Division of Recycling, Department of Conservation, 2006-2009.

Municipal Curbside Recycling Programs:

Moore Recycling Associates (Plastic Recycling Collection: National Reach Study, May 2011) in an evaluation of municipal recycling programs determined that 94 percent of the United States population had access to PET and HDPE bottle recycling programs and 40 percent had access to all resin plastic bottle and non-bottle rigid plastic recycling programs.

In California, 430 cities with 80 percent of the population operate curbside recycling programs that collect some plastic containers. Sixty-six (66) percent of the population has access to curbside collection of all plastic containers. This data was compiled by Moore Recycling Associates as of August 2010.

Neither of these assessments provided data on the actual amounts of plastic material that was recycled by these programs.

❖ Definition of Rigid Plastic Packaging Container Volume

Draft informal regulation changes were originally proposed to use the labeled volume of the container to determine if the container was regulated. However, stakeholder comments noted that the statutory definition clearly states that an RPPC has a volumetric capacity of between eight (8) ounces and five (5) gallons and that the proposed change was inconsistent with statute. The regulations are changed to be consistent with statute.

Regulation of container volume issues are further discussed under 14 CCR Section 17943 (aa).

❖ Relatively Inflexible Container

For many years stakeholders have questioned whether certain plastic packaging meets the definition of an RPPC when it is not the same shape at all times. For example, some acetate containers that are not designed to be folded or collapsed when empty are regulated while almost identical containers that are designed to be folded or collapsed when empty are not regulated. This inequity gives product manufacturers that use foldable or collapsible plastic packaging a competitive advantage since they do not bear the cost of complying with RPPC requirements.

The relevant statutory language states that an RPPC must have a “relatively inflexible finite shape or form...that is capable of holding its shape while holding other products...” (PRC Subsection 42301(f)).

During the first 45-day comment period version of the regulations clarifying language was added to the definition of rigid plastic packaging container regarding the term “relatively inflexible.” The Department interprets “relatively inflexible” to mean that some level of flexibility in shape or form is allowable and proposes further clarification in the revised definition.

The revised regulation 14 CCR Section 17943(aa)(3) says that a container is relatively inflexible if able to maintain essentially “the same shape empty as full” (i.e. holding a product). The revision also says if the container “is designed to be folded or collapsed into a more compact form when not holding a product”, it is still an RPPC.

During the first 45-day comment period version of the regulations revisions were made in 14 CCR Section 17943(aa)(3)(b) to exclude packaging made entirely of film plastic that is flexible and will change shape when holding a product and references American Society for Testing and Materials Guidelines definition of “film plastic” to provide a scientific basis for determinations.

Regulating relatively inflexible containers, including those designed to be collapsed or folded when not full, requires these containers to comply with one of the options under PRC Section 42310 which result in health, safety, and environmental benefits to Californians. Not regulating these containers will likely result in these containers being manufactured with a higher percentage of virgin resins, increases the chances that this packaging will end up in landfill, and increases the net amount of greenhouse gasses to produce the RPPCs.

Regulation of volume and relatively inflexible container issues are further discussed under 14 CCR Section 17943 (aa).

❖ Pre-Certification Process

Product and container manufacturers commented that they did not have sufficient lead time to implement changes to their packaging. Additionally, these manufacturers stated that they needed advance notice to document compliance.

To address these concerns, the revised regulations include a new pre-certification process. The precertification process was added in the informal regulations development period and modified in the first and second 45-day comment period and 15-day comment period versions of the regulations.

The law requires that all product manufacturers comply with the RPPC law at all times. In past certification cycles it has been difficult for product manufacturers to document compliance when they have been notified during the measurement period as allowed under existing regulations. Under the pre-certification process, a subgroup of all known product manufacturers will be notified about the requirements of the RPPC law and that they may be required to certify compliance about one year before the measurement period (calendar year). Notice will be sent to the subset of that subgroup selected to certify about one year before certifications are due.

This process provides a product manufacturer two years notice before the certification is due and also provides Department staff ample time to work with selected companies to resolve compliance questions and issues prior to a certification cycle.

Generally, providing notice should reduce the regulatory burden on manufacturers. The Department considered providing greater notice prior before requiring certification. However, the Department ultimately determined that it was impractical to establish the certification subgroup more than a year in advance, that it would create more burden on those not ultimately selected to demonstrate compliance.

Regulation of product manufacturer pre-certification process issues are further discussed under 14 CCR Section 17945.1.

❖ Product Manufacturer Selection and Notification Process

Based on stakeholder comments that the process for selecting and notifying companies for certification is unclear, as well as concerns about equity in how companies were and will be selected for certification, language is added that defines the process the Department will use to select and notify companies that will be asked to certify.

Some product manufacturers commented that it was unfair to select a company that had been found to be out of compliance to certify over multiple certification cycles. The first and second 45-day and 15-day comment period versions of the regulations were modified to clarify that product manufacturers found out of compliance in past certification cycles may be first priority for selection in future cycles. Revisions were made due to product manufacturer comments at workshops.

Compliance history is routinely considered in selecting members of a regulated community to demonstrate compliance with a wide variety of laws. Companies with a history of compliance problems may be sampled at higher rates. The possibility of being selected in a subsequent

certification may encourage non-compliant companies to more quickly come into compliance with the law and demonstrate that to the Department.

Additionally, while the Department has established a hierarchy that prioritizes manufacturers that were previously found out of compliance and have since not successfully certified as compliant, it may also include product manufacturers that have not yet been selected to certify compliance or manufacturers that have previously been found to be in compliance. Entities from each pool may be included and will be randomly selected from their pool. This is intended to encourage immediate compliance by all, rather than allowing a manufacturer to take corrective actions only when caught violating. Establishing a broader pool of manufacturers that might be required to demonstrate compliance provides more incentive for manufacturers to comply.

Excluding manufacturers with past compliance problems from the pool of manufacturers that could be selected to certify compliance might encourage manufacturers to violate the RPPC law, pay one penalty and be guaranteed they will not have to comply or pay penalties in subsequent years. On the other extreme, a program which always required manufacturers with compliance problems to certify before considering other manufacturers would not place sufficient regulatory pressure on the broader population of product manufacturers regulated under the program. The Department selected a middle ground; based on enforcement experience. The Department expects that this will maximize the number of manufacturers that comply with the program and maximize the overall benefits of the program.

Regulation of product manufacturer selection and notification process and issues are further discussed under 14 CCR Section 17945.1.

❖ Exempt Rigid Plastic Packaging Containers

Product manufacturers requested more clarity on what is required to document claims for exempt RPPCs. In response to stakeholder comments during the formal rulemaking, requirements were amended to clarify when and how a product manufacturer must notify the Department of its claim of exempt RPPCs. In past certification cycles the Department (then Board) spent considerable time researching exemptions because information submitted did not include the specific types of documentation listed in the proposed regulations. The Department needs this information to evaluate whether the request meets the statutory exemptions allowed in PRC Section 42340

In the first 45-day comment period version of the regulations, product manufacturers were required to submit a written request to receive an exemption with the basis for the exemption to include any applicable Material Safety Data Sheets.

Product manufacturers objected to the draft language; since these containers were exempt under statute, these manufacturers did not have to request an official exemption from the Department. Upon reviewing PRC Section 42340, the Department determined that it is not necessary for product manufacturers to petition the Department for an exemption, but simply to report their claim so the Department can review it for compliance with statute.

The second 45-day and 15-day comment period versions of the regulations were revised to require exempt RPPCs be reported by a product manufacturer selected to certify compliance

and delete specific references to submitting Material Safety data Sheets and request more general types of documentation to be reported.

The Department has determined that this option is least burdensome on California businesses while establishing that only statutorily exempt containers are excluded from the program.

Regulation of exempt rigid plastic packaging container opinion issues are further discussed under 14 CCR Section 17946.5.

❖ Advisory Opinions

Historically, product manufacturers and container manufacturers routinely requested determinations of whether a plastic container was an RPPC. The Department (then Board) processed them on a case-by-case basis when they were received, and as staff resources were available (existing regulations Section 17943 (b)(30)(E)). Stakeholders were unhappy with the lengthy time required to obtain a determination. The Department does not have the staff resources to determine whether a specific container must meet the RPPC requirements any time a product manufacturer or container manufacturer requests a determination. There are thousands of known product manufacturers subject to this program and many of them have multiple products packaged within RPPCs; the department would not have the staff resources to provide advisory opinions for every product packaged in a RPPC and sold in California. However, the Department recognizes that some advisory opinions will be needed. During the informal rulemaking, stakeholders requested that the revised regulations provide a process for obtaining advisory opinions. Since the product manufacturers are responsible for compliance with the law, this section does not include advisory opinions for container manufacturers.

The proposed first and second 45-day comment period and 15-day versions of the revised regulations limit product manufacturer requests for such advisory opinions to the pre-certification and certification processes to help ensure the number of requests received by the Department is manageable and the requests are relevant to the pending certification cycle.

Additionally, not noted in the regulations, the Department is committed to establishing a website to demonstrate examples of containers which are compliant and containers which would not be compliant, based on the applicable statutes and regulations.

The Department determined that these options were the most cost effective way to provide guidance to stakeholders so that they experience the least amount of burden when attempting to comply with the program requirements

Regulation of advisory opinion issues are further discussed under 14 CCR Section 17948.2.

❖ Penalties on Container Manufacturers for Providing False Information

In past certification cycles product manufacturers said that they are often dependent on container manufacturers' certifications to determine compliance, they often could not obtain accurate information from container manufacturers, and the product manufacturers, but not

container manufacturers could be penalized for lack of accurate information from container manufacturers.

The revised regulations add a provision that describes the penalties and fines to which a container manufacturer may be subject if it is found to have provided false or misleading information to a product manufacturer. The revisions further clarify that a product manufacturer is not subject to fines or penalties if its non-compliance was the result of relying on false or misleading information from a container manufacturer. This proposed revision is consistent with PRC Sections 42321.5 (a) and (b).

This option was deemed less burdensome on product manufacturers than would otherwise be required if they were held liable for the actions of container manufacturers. The health, safety, and environmental interests of Californians is still protected under this option because container manufacturers are still subject to prosecution by the Attorney General for fraud if they submit false or misleading information on certification documents.

Regulation of penalties on container manufacturers for providing false information issues are further discussed under 14 CCR Section 17949 (b).

❖ “Good Faith Effort” Requirements and Factors to Consider Regarding Impacts on Small Businesses Before Issuing a Penalty

Based on enforcement experience, the Department identified that there should be discretion to consider “good faith efforts” when prosecuting unintentional violators who had made efforts to comply with the program requirements.

The regulations were revised in the informal regulations development process to add a provision that an Administrative Law Judge or the Department may consider a product manufacturer’s “Good faith efforts to comply with this Article” (Subsection 17949 (h)(4)), not just whether the product manufacturer was in full compliance, when determining penalties.

This provision allows product manufacturers to provide evidence of making a “good faith effort” prior to the Department assessing a penalty. “Good faith effort” has been used for many years when considering penalties in other Department programs, including city and county requirements to plan and implement diversion programs to achieve 50 percent diversion.

The “Good Faith Effort” consideration was added to the existing similar provisions in Section 17949(h) that limit the impacts to small businesses by allowing the Department to factor into its enforcement:

- The impact on diversion in California
- The impact on sustainable markets in California, and
- The size of the product manufacturer

The use of these factors in implementing the program will help ensure that the regulations do not affect small businesses disproportionately.

The “good faith effort” portion of the penalty provisions is discussed further in proposed 14 CCR Section 17949 (h)(4).

❖ Updated Economic and Fiscal Impact Statement

Requirements:

California's Administrative Procedures Act (Government Code section 11340 [et seq.] requires state agencies prior to adopting or amending regulations to "assess the potential for adverse economic impact on California business enterprises and individuals" including reporting and recordkeeping requirements. The Economic and Fiscal Impact Study only needs to consider direct costs associated with complying with the regulation prior to submittal to the Office of Administrative Law (OAL). The Department is not in the California Environmental Protection Agency and is not subject to Health and Safety Code Section 57005 that defines major regulations as regulations with more than a \$10 million dollar impact on California.

Government Code Section 11346.3

- (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:
- (1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.
 - (2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.

- (b)(1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:
 - (A) The creation or elimination of jobs within the State of California.
 - (B) The creation of new businesses or the elimination of existing businesses within the State of California.
 - (C) The expansion of businesses currently doing business within the State of California.
 - (2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.
 - (3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.
- (c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding

that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

Definition of “Cost impact” in the Administrative Procedures Act (GC 11342.535) refers only to direct costs.

GC Section 11342.535

"Cost impact" means the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

The Economic and Fiscal Impact Study does not have to be done again later in the regulations revisions process. However, the Department has added more up-to-date costs data and re-run the analyses, as presented below.

RPPC Survey:

Consistent with section 6607 of the State Administrative Manual, the department attempted to develop the “working data” for calculating costs through an economic impact survey of approximately 1,500 plastic container manufacturers, RPPC product manufacturer, recyclers and processor of recycled plastics, trade associations and other stakeholders. The department received a total of 95 responses during October and November 2008. Only 30 container and product manufacturers provided any cost information. The department using standard statistical analyses (mean tests, confidence intervals, cross tabulations, etc) determined that the magnitude of capital and operating costs impacts could not be determined with a reasonable degree of certainty. The primary reasons for that conclusion were the extreme variability of the responses, inconsistent/contradictory data from the same responder and the very small samples. The result was that a conclusion that the proposed regulations had no economic impact was just as likely as a conclusion that every manufacturer faced multi-million dollar costs. Also, the small number of responses made it impossible to assess the cost of any individual amendment, particularly the limited responses on cost savings from the alternative compliance option of using California-derived postconsumer material in other products.

Overview of Economic and Fiscal Impact Analysis:

The department decided to use an alternative approach to conduct the economic impact analysis. That approach was to develop a “model” that relied on existing departmental data sources. The department in 2003—2004 had expanded its periodic statewide waste characterization analysis to determine that amount of RPPCs being disposed in California. That study separated RPPCs into 15 individual categories by resin type and container style. Until the statutory mandate was repealed in 2004, the department calculated annual RPPC recycling rates, and manufacturers could use that rate to demonstrate compliance. The waste characterization data, the recycling rate calculations were coupled with the plastic beverage container recycling data that California consumes more than 7.2 billion RPPCs each year. Using product manufacturer certifications for the years between 1996 and 2005, it was estimated that 3.94 billion RPPCs are regulated by the RPPC law. The remaining 3.3 billion RPPCs are exempt from the manufacturer compliance requirement. Finally, it was determined that about 672.7 million RPPCs would be impacted by the proposed amendments.

The number of California manufacturers and retailers impacted were estimated through publicly available data sets of state and federal agencies, including the Board of Equalization, Department of Finance, and the US Department of Commerce. The economic impact analysis

relied heavily on the 2002 US Census of Manufacturing because California-specific data (including county and regional areas) for the 2007 Census was not yet available when the analysis was conducted. Plastic resin prices were obtained from several public sources, including the trade publication Plastics News which maintains long-term historical data series for virgin and recycled plastic resins.

Except for the 'No Resin Switching to Achieve Compliance' amendment, it was assumed that 55 percent of the impacted RPPCs would comply through the 25 percent postconsumer material (PCM) compliance option; 40 percent by source-reducing the RPPC and 5 percent by the reusable container option. This is consistent with the proportion of compliance methods used in compliance certifications submitted for the years 1996 through 2005.

The cost impacts of the postconsumer material compliance option were calculated by estimating that amount of postconsumer material container manufacturers would need to acquire to produce containers meeting the 25 percent requirement. The operating costs were calculated assuming the postconsumer material would be 10 cents per pound more expensive than the virgin resin being displaced. In 2009, the market price of postconsumer material was about 30 cents per pound less than virgin resins. This 40 cent differential was considered to cover all costs of resin purchases and processing as well as costs of any new jigs, dies and molds that might be required. The replacement RPPC costs, under the reusable container option, were calculated by the same method. Because of the reduction of plastic material needed, operating costs associated with the source reduction compliance option were assumed to have a zero cost.

For the 'No Resin Switching' amendment, operating costs were based on the differentials of market prices between resins. For RPPCs that were switched from HDPE to polypropylene (PP) the differential was increased to compensate for any potential costs of changing molds by container manufacturers.

Availability of Material:

The Department received a number of written and verbal comments in the public workshops that the analysis did not consider the lack of available material.

Because of the relatively modest amount of new postconsumer material that would be need to comply with manufacturer requirements; the economic impact analysis did not specifically address the availability of postconsumer material. Tables 1 and 2, below demonstrate that California-based manufacturers would need about one percent of the state's supply and all United States manufacturers would need far less than one percent of the national supply

Table 1				
Postconsumer Material Needed for California-based Manufacturer Compliance with Amended RPPC Regulations				
Resin Type	CRV RPPCs Sold (millions of pounds)¹	CRV Containers Recycled (millions of pounds)¹	Total Postconsumer Material for Compliance for containers sold or offered for sale in Calif. (millions of pounds)²	Postconsumer Material as Percent of CRV RPPCs Recycled for containers sold or offered for sale in Calif. (%)
PET (#1)	551.21	374.61	1.04	0.28
HDPE (#2)	55.67	51.23	2.44	4.76
PVC (#3)	0.08	0.0001		
LDPE (#4)	0.46	0.0035		
PP (#5)	0.22	0.01		
PS (#6)	0.51	0.04		
Other (#7)	5.85	0.61		
Total #3--7 Resins:	7.11	0.66	0.91	137.82
Total: All Resin Types	614.0	426.50	4.39	1.03
¹ California Redemption Value (CRV): CalRecycle 2010 Beverage Container Sales and Recycling Data				
² Economic Impact Analysis Calculations				

Table 2				
Postconsumer Material Needed for ALL Manufacturer Compliance with Amended RPPC Regulations				
Resin Type	Plastic Bottles Recycled (millions of pounds)¹	Plastic Non-Bottle Rigid Recycled: 2009 (millions of pounds)²	Total Postconsumer Material for Compliance for containers sold or offered for sale in Calif. (millions of pounds)³	Postconsumer Material as Percent of Recycled Bottles and Non-Bottles for containers sold or offered for sale in Calif. (%)
PET (#1)	1,557	11	4.18	0.27
HDPE (#2)	984	83	9.95	0.93
PVC (#3)	1.4	65		
LDPE (#4)	1	6		
PP (#5)	35	10		
PS (#6)		3		
Other (#7)		64		
Total #3--7 Resins:	38	149	3.64	1.95
Total: All Resin Types	2,579	243	17.76	0.63
¹ American Chemistry Council and Association of Postconsumer Plastic Recyclers, 2011				
² American Chemistry Council and Moore Recycling, 2011				
³ Economic Impact Analysis Calculations				

Results of the Economic Impact Analysis:

The 2009-2010 analysis found that the amendments would, on average, increase the cost of the 672.7 million impacted RPPCs by about 0.52 cent per container with a total statewide cost of nearly \$3.5 million annually. For the average California resident the estimated impact was about 9 cents per year. Table 3 (Table 2 in the original study) summarizes the annual estimated cost impacts on California-based product manufacturers, business and residential users, the average cost of the impacted RPPCs as well as a comparison of the container impact with all 3.94 billion regulated RPPCs.

Table 3
Summary of Estimated Annual Costs to California-Based Product Manufacturers and
Users of RPPCs⁺
(2009 Prices)

Proposed Regulation Amendment	Number of Impacted Containers (Millions)	Cost to California-Based Product Manufacturers (\$/Year)	Total Statewide Cost for All California Users of RPPCs *(\$/Year)	Cost Impact Per Impacted Container (\$)	Cost Impact on all Regulated RPPCs** (\$)
1. NO EXCLUSION FROM THE DEFINITION OF RPPC FOR BUCKETS, TUBS, PAILS, CLAMSHELLS, ETC.	357.2	\$303,000	\$2,381,000	\$0.007	\$0.0006
2. POST-INDUSTRIAL MATERIAL CAN NO LONGER BE SUBSTITUTED FOR POSTCONSUMER MATERIAL IN COMPLIANCE CALCULATIONS	118.3	\$175,000	\$1,485,000	\$0.013	\$0.0004
3. RESIN SWITCHING WILL NO LONGER BE ALLOWED TO ACHIEVE SOURCE REDUCTION	78.9	\$87,000	\$739,000	\$0.009	\$0.0002
SUB-TOTALS OF COST INCREASES	554.4	\$564,000	\$4,605,000	\$0.008**	\$0.0012**
SUBTRACT:					
4. PRODUCT MANUFACTURERS CAN ACHIEVE COMPLIANCE THROUGH USE OF CALIFORNIA POSTCONSUMER MATERIAL IN OTHER PRODUCTS	118.3	\$131,000	\$1,114,000	\$0.009	\$0.0003
Sub-Totals of Cost Decreases	118.3	\$131,000	\$1,114,000	\$0.009	\$0.0003
Annual Total Statewide Cost Impact of All Regulation Amendments	672.7	\$433,000	\$3,491,000	\$0.005***	\$0.0009***

* Users include all businesses and individuals which consume products packaged in RPPCs.

**Weighted averages based on number of impacted and total regulated RPPCs.

*** Average cost per container for the 3.94 billion RPPCs that would be required to comply.

⁺ Subtotals and totals may not add up due to rounding.

Because of the recycled and virgin resin price changes during the more than 2 years between the approved economic impact analysis and the Department adoption of the revisions to the definition of postconsumer material that include the 'Post-industrial Material cannot be Substituted for Postconsumer' amendment, the department recalculated the estimated cost impacts. Table 4 provides selected recycled and virgin resin prices for 2009 and December 2011.

**Table 4
Selected Virgin and Recycled Resin Prices, 2009 and 2011**

Resin Type:	Type	2009 Price (cents per pound)	2011 Price (cents per pound)
PET (#1)	Virgin: Bottle grade	67	100
	Recycled: Clear	50	70
	Recycled: Green	38	56
HDPE (#2)	Virgin: Injection Grade	68	86
	Virgin: Blow Mold Co-Polymer	71	91
	Recycled: Natural	36	70
	Recycled: Mixed Postconsumer	28	62
PVC (#3)	Virgin: Injection Grade	71	97
	Recycled: Clear Postconsumer	36	49
	Recycled: Mixed Post-industrial	35	57
PP (#5)	Virgin: Injection Homo-Polymer	71	98
	Virgin: Blow Mold Random Co-Polymer	75	102
	Recycled: Post-industrial	37	75
PS (#6)	Virgin: High Heat Injection	85	118
	Recycled: High Heat Postconsumer	48	54

Revised Definition of Postconsumer Material and 2011 Resin Prices

The revised definition of postconsumer material to include obsolete and unsold containers that would otherwise be disposed as a solid waste is estimated to reduce the number of containers impacted by the 'No Post-industrial Substitution' and 'California Postconsumer Material in Other Products' amendments by 10 percent, or about 23.6 million RPPCs. Based on analysis of recycled and virgin resin prices, the 30 cent per pound spread between postconsumer and virgin resin remained fairly constant for the entire mix of RPPC, however, for the 'No Exclusion from the Definition' amendment there was about a four percent increase in costs. For the 'No Resin Switching' the polypropylene and polystyrene resin prices increased relative to HDPE and PET prices. The result was a nearly 13 percent increase in costs. These increases were nearly offset by the over 10 percent reduction in post-industrial material prices and the 10 percent reduction in impacted containers of two compliance options.

Since the original EFIS was completed in 2010, annual costs have increased from \$3.5 million to \$3.6 million. Table 5 summarizes the re-calculated program costs. For the total of California-based product manufacturers the costs increased by \$16,000. For the estimated 649.1 million impacted RPPCs, the average cost per container is 0.55 cent. For the average California resident the estimated impact increases by about 9 cents to 9.5 cents per year.

Table 5

**Summary of Updated and Re-calculated Estimated Annual Costs to California-Based
Product Manufacturers and Users of RPPCs⁺
(2011 Prices and Revision Definition of Postconsumer Material)**

Proposed Regulation Amendment	Number of Impacted Containers (Millions)	Cost to California-Based Product Manufacturers (\$/Year)	Total Statewide Cost for All California Users of RPPCs *(\$/Year)	Cost Impact Per Impacted Container (\$)	Cost Impact on all Regulated RPPCs** (\$)
1. NO EXCLUSION FROM THE DEFINITION OF RPPC FOR BUCKETS, TUBS, PAILS, CLAMSHELLS, ETC.	357.2	\$355,000	\$2,792,000	\$0.008	\$0.0007
2. POST-INDUSTRIAL MATERIAL CAN NO LONGER BE SUBSTITUTED FOR POSTCONSUMER MATERIAL IN COMPLIANCE CALCULATIONS	106.5	\$133,000	\$834,000	\$0.011	\$0.0003
3. RESIN SWITCHING WILL NO LONGER BE ALLOWED TO ACHIEVE SOURCE REDUCTION	78.9	\$100,000	\$846,000	\$0.011	\$0.0002
SUB-TOTALS OF COST INCREASES	547.6	\$587,000	\$4,770,000	\$0.009**	\$0.0012**
SUBTRACT: 4. PRODUCT MANUFACTURERS CAN ACHIEVE COMPLIANCE THROUGH USE OF CALIFORNIA POSTCONSUMER MATERIAL IN OTHER PRODUCTS	106.5	\$138,000	\$1,174,000	\$0.011	\$0.0003
Sub-Totals of Cost Decreases		\$138,000	\$1,174,000	\$0.011	\$0.0003
Annual Total Statewide Cost Impact of All Regulation Amendments	649.1	\$449,000	\$3,596,000	\$0.0055***	\$0.0009***
<p>* Users include all businesses and individuals which consume products packaged in RPPCs. **Weighted averages based on number of impacted and total regulated RPPCs. *** Average cost per container for the 3.94 billion RPPCs that would be required to comply. ⁺ Subtotals and totals may not add up due to rounding.</p>					

❖ Effective Date of Regulations

Some product manufacturer representatives and some container manufacturers say it will take time, up to five years, for containers newly impacted by changes in the RPPC regulations to be brought into compliance with the changes. The proposed effective date of these regulations is January 2013, the start of the first full calendar year after the regulations are approved. This is consistent with other regulations that have a calendar year measurement period, such as the Disposal Reporting System regulations. The California Integrated Waste Management Board specified that the Disposal Reporting System regulations became effective at the start of the calendar year following submission to the Office of Administrative Law.

That means the first time a manufacturer could be notified they were in a precertification pool of product manufacturers that could be selected for certification is March 2013. The pre-certification process provides product manufacturers with one year's advance notice that they have been identified as a product manufacturer and may be required to certify compliance. The advance notice provides product manufacturers the opportunity to identify and resolve various compliance issues prior to submitting a certification, if and when selected. Under the adopted revised regulations, the first time a product manufacturer that was in the precertification pool could be notified they have been selected to certify compliance is March 2014. The certification would be for calendar year 2014 and would be due in April 2015 (or May 2015 with an extension). This is more consistent with the Economic and Fiscal Impact Statement (EFIS) timeframe for costs to replace jigs, dies and molds (Class #30.21) which has an asset life of three and a half (3½) years. Information on the equipment costs is from manufacturers that responded to the Department's 2008 RPPC survey used to prepare the EFIA.

The effective date of the regulations is specified on the Form 400 that is submitted to the Office of Administrative Law.

In conclusion, the proposed regulations do add 547.6 million regulated containers for a total of 3.94 billion regulated RPPCs. This adds to product manufacturer requirements. However, the combination of the changes listed below will reduce the burden of the regulations revisions on product manufacturers so that no alternative will be as effective in achieving the RPPC goals with less burden:

- Delaying the effective date of the regulations until January 1, 2013,
- Addition of the pre-certification cycle to give product manufacturers one year advance notice that they may be selected to certify,
- Addition of provisions for product manufacturers to request advisory opinions on whether a plastic container is an RPPC and must meet requirements during the precertification and certification cycle,
- The first certification cycle for product manufacturers during 2014 (expect to request certifications from 100 companies, depending on staff resources),
- The first certifications due in spring 2015,
- Addition of penalties on container manufacturers, not product manufacturers, if container manufacturers provide false or misleading information for a certification, and
- Addition of Department consideration of a product manufacturer's good faith efforts and size of the business and impact on the California waste stream to comply prior to imposing a penalty.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

CalRecycle staff has determined that the proposed regulations do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Part 7 of Division 4 of the Government Code Sections 17500 -17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the State. (See related information in section on “Initial Determination” below.)

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Department relied upon the following in proposing the adoption of these revised regulations:

1. The California Integrated Waste Management Act of 1989 (PRC Section 40000 et. seq.).
2. The Rigid Plastic Packaging Container Act of 1991 (PRC Section 42300 et. seq.).
3. Comments received during the RPPC certification cycles for the reporting periods 1996, 1997-99 (combined into one certification), 2000, 2001 and 2005.
4. Statutory changes since the RPPC regulations were adopted in 1995.
5. Oral comments made by stakeholders at informal draft regulations stakeholder workshops and meetings on April 17, 2007, May 16, 2007 and June 26, 2007.
6. Written comments by stakeholders on the May 16, 2007, June 26, 2007 and August 21, 2007 informal draft regulations.
7. Written and oral comments by stakeholders during the initial 45-day public comment period for this rulemaking, February 11 through March 28, 2011, and the subsequent public hearing on April 8, 2011, and public workshops on April 8, May 17, June 8 and June 23, 2011.
8. Written and oral comments by stakeholders during the second 45-day public comment period for this rulemaking, July 29 through September 15, 2011, and the subsequent public workshop on October 5, 2011.
9. Written comments by stakeholders during the 15-day public comment period for this rulemaking, October 31 through November 15, 2011.
10. Written comments by stakeholders during the 30-day Notice of Intent to Adopt a Negative Declaration Pursuant to the California Environmental Quality Act (CEQA) period of November 4 to December 5, 2011.
11. Oral comments by stakeholders at the final public hearing, January 17, 2012.
12. Other documents (Reports, Studies and other Publications) included in Binders 4, 5, & 6.

INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made the finding that these regulations will not have a significant adverse economic impact on business or on the ability of California businesses to compete with business in other states.

Based on Sec. 13 of Chapter 740, Statutes of 2000, Department staff has determined that the regulations do not impose a mandate on local agencies or school districts that requires State reimbursement pursuant to Part 7, commencing with section 17500 of Division 4 of the Government Code.

DUPLICATION OR CONFLICTS WITH CODE OF FEDERAL REGULATIONS

The Department has made the finding that no unnecessary duplication or conflict exists between the proposed regulations and federal regulations contained in the Code of Federal Regulations because federal law or regulations do not contain comparable requirements.

FINDING ON NECESSITY OF REPORTS (GOVERNMENT CODE SECTION 11346.3(c))

The Department has found that the requirements for specific reports are necessary for the health, safety and welfare of the people of the state because it will help to ensure that the requirements of these regulations are met and adequately monitored.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

SECTION 17942 – Regulatory Effect of Questions and Answers; Effective Dates. Product manufacturers and other interested parties have stated that the existing question and answer format of the regulations is difficult to read and understand. The proposed removal of the question and answer format will improve the overall clarity of the regulations.

This section is deleted because the question and answer format is deleted to improve clarity.

Subsection 17942 (a) This section is deleted because it refers to the question and answer format that stakeholders said is confusing and difficult to follow. The question and answer format is deleted, so reference to it is no longer accurate. This section also refers to statutory provisions related to RPPCs. Specific statutory provisions are referenced, where appropriate, in other sections of the regulations and these specific references are clearer than a general reference to statute. Because of this, the general reference to statute is deleted.

Subsection 17942 (b) This section is deleted because it is no longer necessary. It refers to conditions required before the RPPC regulations could go into effect. The conditions were met prior to the RPPC regulations going into effect in 1995. The current subsection references requests for waivers in Section 17944.2. The proposed regulations include requests for waivers and the effective dates for waivers in Section 17946.

SECTION 17943 – Definitions.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Definitions of the following technical and administrative terms were added and/or amended or deleted to assure regulatory consistency and clarity throughout this article. These terms have specific meanings with regard to the methods and procedures identified in the proposed regulations, and are defined for the purposes of this Article. If these terms are not defined, the meanings may be unclear and the regulated public as well as the regulators may fail to consistently interpret the regulations. Terms proposed to be added are used within the proposed regulations and have new, specific requirements related to the proposed terms. Terms deleted are those no longer or not used in the regulations, or are not consistent with industry standards and could cause confusion if they remain in the regulations.

The proposed section is moved from current Subsection 17943 (b) and amended. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations. The current section is organized so all definitions are numbered subsections of Subsection (b) (i.e., Section 17943(b)(1) to (b)(31)). The proposed section is organized so all definitions are lettered Subsections of Section 17943 (i.e. Section 17943 (a) to (ag)). The discussion of the purpose and necessity of each move, or amendment and move is discussed under the new proposed Subsection.

Subsection 17943 (a) The current Subsection is deleted. Product manufacturers and other interested parties have stated that the existing question and answer format of the regulations is difficult to read and understand. The proposed removal of the question and answer format will improve the overall clarity of the regulations, as requested by stakeholders.

The proposed Subsection (a) is the definition of a “**Calendar Year**”. This definition is added for clarity and is used to specify a consistent certification cycle. Manufacturers regulated by the program operate on a variety of fiscal years, while the RPPC certification cycles will be based on a calendar year (January-December) basis.

Subsection 17943 (b) “Definitions” The current Subsection is deleted because proposed Section 17943 was renamed “Definitions.” Therefore, it is no longer necessary to include a Subsection titled “Definitions.”

The proposed Subsection (b) is a definition of “**Concentrated Product.**” During the rulemaking process, stakeholders commented that concentration may be accomplished by various means (e.g., enhancing or selecting more effective ingredients). This definition is added for clarity and ease of reference by product manufacturers since the term is frequently used throughout these regulations to describe one of the source reduction compliance options.

Subsection 17943 (b)(1) “Board” The current Subsection is deleted. The Department of Resources Recycling and Recovery (Department) succeeded the Board and its authority on January 1, 2010 (Stats.2009 c.21 (S.B.63)). This Subsection is replaced by proposed Subsection 17943 (f).

Subsection 17943 (b)(2) “Capable of Multiple Re-closure” The current Subsection is deleted. As defined in PRC Subsection 42301 (e) a RPPC includes, but is not limited to, bottles, cartons, and other receptacles. Statute does not require that a container be capable of

multiple re-closure or have a lid. The current definition has created equity issues in that similar products are sold in virtually identical packaging and currently some are regulated and others are not regulated. One may have a lid and be a regulated container and one may not have a lid and be unregulated. For example, some caulking tubes are sold with a lid and are regulated and some are sold without a lid and not regulated, yet the container itself is identical. It is therefore necessary to repeal this definition, eliminate the ambiguity regarding what products are regulated, and create a level playing field consistent with statute.

Subsection 17943 (b)(3) “Cosmetic” The current Subsection is deleted because cosmetic containers are not regulated in the remainder of the regulations and thus the term has no regulatory meaning. Cosmetic container exemptions remain in the regulations under proposed Section 17946.5 and are defined in PRC Section 42340.

Subsection 17943 (b)(4) “Container Manufacturer” The current Subsection is moved to proposed Subsection 17943 (d) and amended.

Subsection 17943 (b)(5) “Curbside Collection Program” The current Subsection is moved to proposed Subsection 17943 (e) and amended.

Subsection 17943 (b)(6) “Drugs” The current Subsection is deleted because drug containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Drug container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(5) and are defined in PRC Section 42340 (b).

Subsection 17943 (b)(7) “Final End User” The current Subsection is moved to proposed Subsection 17943 (h) and amended.

Subsection 17943 (b)(8) “Food” The current Subsection is deleted because food containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Food container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and are defined in PRC Section 42340 (b).

Subsection 17943 (b)(9) “Infant Formula” The current Subsection is deleted because infant formula containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Infant formula container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and are defined in PRC Section 42340 (b).

Subsection 17943 (b)(10) “Introduced” The current Subsection is moved to proposed Subsection 17943 (m) “Newly Introduced Product” and amended.

Subsection 17943 (b)(11) “Label” The current Subsection is deleted because the use of the term label is only minimally included in the remainder of the regulations and only with a dictionary meaning.

Subsection 17943 (b)(12) “Manufacturer” or “Product Manufacturer” The current Subsection is deleted and replaced, in part, by proposed Subsection 17943 (t) “Product Manufacturer.” The current regulations use of a single definition for both “manufacturer” and “product manufacturer” caused significant confusion for both container manufacturers and regulated product manufacturers as to who was responsible for complying with the law.

The RPPC law was one of the early laws addressing producer responsibility. Over the last 20 years, the Department has gained experience in implementing the regulations and identified issues with determining the responsible party. The current definition in this Subsection uses the following hierarchy for determining who is responsible for complying: the product manufacturer, the distributor, or the importer. Using this hierarchy often did not lead the Department to any responsible party. This was particularly an issue for retailer private labels where a company directed another company to produce a product. The manufacturer listed on the private label was not the company that was primarily responsible for the product's generation or responsible for putting the product into the stream of commerce.

Since 2002, when the RPPC regulations were last revised, there has been extensive debate and several new laws related to producer responsibility. The deletion of this definition and addition of the proposed definition of product manufacturer in Subsection 17943 (t) is consistent with the language used in the "producer" or "generator" definition in other environmental statutes such as the Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). In addition, the proposed regulations provide a process in Section 17945.1 (b), where a company is notified they are in a potential certification pool and allows them to demonstrate, prior to the certification cycle, that they are not product manufacturers and are not regulated by this program.

Subsection 17943 (b)(12)(A) The current Subsection is deleted. It is replaced, in part, by information contained in proposed Subsections 17943 (t) and Section 17945.1. The current hierarchy factors used to identify the Product Manufacturer are: 1) if the manufacturer is listed on the label they are responsible, 2) if no manufacturer is listed on the label and a distributor is listed, the distributor is responsible, 3) if no manufacturer or distributor is listed on the label, and an importer is listed, then the importer is responsible. In many cases, this has led to the Department not being able to identify the responsible party. Proposed Subsection 17943 (t) and Section 17945.1 address issues related to who is responsible for complying with requirements and provide companies opportunities to demonstrate they are not required to comply.

Subsection 17943 (b)(12)(A)(1) The current Subsection is deleted. It is replaced, in part, by information contained in proposed Subsections 17943 (t) and Section 17945.1. Currently the first factor in the hierarchy used to identify the Product Manufacturer is "When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity shall be considered the product manufacturer." In combination with the factors in Subsections 17943 (b)(12)(A)(2) and (A)(3), in many cases this has led to the Department not being able to identify the responsible party. Proposed Subsection 17943 (t) and Section 17945.1 address issues related to who is responsible for complying with requirements and provide companies opportunities to demonstrate they are not required to comply.

Subsection 17943 (b)(12)(A)(2) The current Subsection is deleted. It is replaced, in part, by information contained in proposed Subsections 17943 (t) and Section 17945.1. Currently the second factor in the hierarchy used to identify the Product Manufacturer is "When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor shall be considered the product manufacturer." In combination with the factors in Subsections 17943 (b)(12)(A)(1) and (A)(3), in many cases this has led to the Department not being able to identify the responsible party. Proposed Subsection 17943 (t) and Section 17945.1 address issues related to who is responsible for complying with requirements and provide companies opportunities to demonstrate they are not required to comply.

Subsection 17943 (b)(12)(A)(3) The current Subsection is deleted. It is replaced, in part, by information contained in proposed Subsections 17943 (t) and Section 17945.1. Currently the third factor in the hierarchy used to identify the Product Manufacturer is “When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer shall be considered the product manufacturer.” In combination with the factors in Subsections 17943 (b)(12)(A)(1) and (A)(2), in many cases this has led to the Department not being able to identify the responsible party. Proposed Subsection 17943 (t) and Section 17945.1 address issues related to who is responsible for complying with requirements and provide companies opportunities to demonstrate they are not required to comply.

Subsection 17943 (b)(12)(B) “Stored” The current Subsection is deleted. Under the current regulations, the definition of “Stored” was included as a portion of the definition of “Manufacturer or Product Manufacturer” and was used in relation to the regulation of food containers. Since food containers are no longer regulated under the program, the term “stored” is no longer used in these regulations and, thus, has no regulatory meaning.

Subsection 17943 (b)(12)(C) The current Subsection is deleted. It is replaced, in part, by information contained in proposed Subsections 17943 (t) and Section 17945.1. The current regulations limit the assumption of responsibility by a related corporate entity to container compliance specified in current Section 17944. Proposed Subsection 17943 (t) and Section 17945.1 address issues related to who is responsible for complying with requirements, broaden assumption of responsibility by a related corporate entity to complying with all aspects of the RPPC regulations, and provide companies opportunities to demonstrate they are not required to comply.

Subsection 17943 (b)(13) “May” The current Subsection is moved to proposed Subsection 17943 (j) to be in alphabetical order.

Subsection 17943 (b)(14) “Material Type” The current Subsection is moved to proposed Subsection 17943 (i) and amended.

Subsection 17943 (b)(15) Measurement Period” The current Subsection is moved to proposed Subsection 17943 (k) and amended.

Subsection 17943 (b)(15)(A) The current Subsection is moved to proposed Subsection 17943 (k) and amended.

Subsection 17943 (b)(15)(B) The current Subsection is moved to proposed Subsection 17943 (k) and amended.

Subsection 17943 (b)(16) “Medical Device” The current Subsection is deleted because medical device containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Medical device container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(16)(A) The current Subsection is deleted because medical device containers are not regulated in the remainder of the regulations and the term has no regulatory

meaning. Medical device container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(16)(B) The current Subsection is deleted because medical device containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Medical device container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(16)(C) The current Subsection is deleted because medical device containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Medical device container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(17) “Medical Food” The current Subsection is deleted because medical food containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Medical food container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(17)(A) The current Subsection is deleted because medical food containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Medical food container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(17)(B) The current Subsection is deleted because medical food containers are not regulated in the remainder of the regulations and the term has no regulatory meaning. Medical food container exemptions remain in the regulations under proposed Subsection 17946.5 (a)(2) and defined in PRC Section 42340 (b).

Subsection 17943 (b)(18) “Must” The current Subsection is moved to proposed Subsection 17943 (l) and amended.

Subsection 17943 (b)(19) “Non-Source Reduced Container” The current Subsection is moved to proposed Subsection 17943 (n) and amended.

Subsection 17943 (b)(20) “Original Container” The current Subsection is moved to Subsection 17943 (o) and amended.

Subsection 17943 (b)(21) “Particular Type Rigid Plastic Packaging Container” The current Subsection is moved to Subsection 17943 (p) and amended.

Subsection 17943 (b)(22) “Point-of-Sale Containers” The current Subsection is deleted because the term is not used in the remainder of the regulations and the term has no regulatory meaning.

Subsection 17943 (b)(23) “Postconsumer Material” The current Subsection is moved to proposed Subsection 17943 (q) and amended.

Subsection 17943 (b)(24) “Product Associated Rigid Plastic Packaging Container” The current Subsection is moved to proposed Subsection 17943 (r) and amended.

Subsection 17943 (b)(25) “Recycled” The current Subsection is moved to proposed Subsection 17943 (v) and amended.

Subsection 17943 (b)(26) “Recycling Rate” The current Subsection is moved to proposed Subsection 17943 (w) and amended.

Subsection 17943 (b)(26)(A) The current Subsection is moved to proposed Subsection 17943 (w)(1) and amended.

Subsection 17943 (b)(26)(B) The current Subsection is moved to proposed Subsection 17943 (w)(2) and amended.

Subsection 17943 (b)(27) “Refillable package” The current Subsection is moved to proposed Subsection 17943 (x) and amended.

Subsection 17943 (b)(28) “Replacement product” The current Subsection is moved to proposed Subsection 17943 (y) and amended.

Subsection 17943 (b)(29) “Reusable package” The current Subsection is moved to proposed Subsection 17943 (z) and amended.

Subsection 17943 (b)(30) “Rigid Plastic Packaging Container” The current Subsection is moved to proposed Subsection 17943 (aa) and amended.

Subsection 17943 (b)(30)(A) The current Subsection is moved to proposed Subsection 17943 (aa)(1) and amended.

Subsection 17943 (b)(30)(B) The current Subsection is moved to proposed Subsection 17943 (aa)(4) and amended.

Subsection 17943 (b)(30)(C) “Flexible container” The current Subsection is deleted because the term is not used in the remainder of the regulations and the term has no regulatory meaning. Clarification that flexible packaging is not an RPPC is included in proposed Subsection 17943 (aa)(3)(B).

Subsection 17943 (b)(30)(D) “Rigid container” The current Subsection is deleted because the term is not used in the remainder of the regulations and the term has no regulatory meaning. Clarification of what constitutes a “rigid” container is included in proposed Subsection 17943 (aa)(3)(A).

Subsection 17943 (b)(30)(E) The current Subsection is deleted as it is no longer necessary. It is replaced, in part, by the procedure for obtaining a determination on whether a container is a RPPC in proposed Section 17948.2, Advisory Opinions.

Subsection 17943 (b)(31) “Source reduced container” The current Subsection is moved to proposed Subsection 17943 (af) and amended.

Subsection 17943 (b)(31)(A) The current Subsection is deleted. The current subsection provides for consideration of compliance as of January 1, 1995 based on efforts by a product

manufacturer during the time frame of January 1, 1990 - December 31, 1994. As written, this Subsection is no longer necessary within the regulations. The Department will rely on the requirements in PRC Section 42301 (j)(1)(A).

Subsection 17943 (b)(31)(A)(1) The current Subsection is deleted. The current subsection provides for consideration of compliance as of January 1, 1995 based on efforts by a product manufacturer during the time frame of January 1, 1990 - December 31, 1994. As written, this Subsection is no longer necessary within the regulations. The Department will rely on the requirements in PRC Section 42301 (j)(1)(A).

Subsection 17943 (b)(31)(A)(2) The current Subsection is deleted. The current subsection provides for consideration of compliance as of January 1, 1995 based on efforts by a product manufacturer during the time frame of January 1, 1990 - December 31, 1994. As written this Subsection is no longer necessary within the regulations. The Department will rely on the requirements in PRC Section 42301 (j)(1)(A).

Subsection 17943 (b)(31)(B) The current Subsection is moved to proposed Subsection 17943 (af)(1) and amended.

Subsection 17943 (b)(31)(B)(1) The current Subsection is moved to proposed Subsection 17943 (af)(1)(A) and amended.

Subsection 17943 (b)(31)(B)(2) The current Subsection is moved to proposed Subsection 17943 (af)(1)(B) and amended.

Subsection 17943 (b)(31)(B)(3) The current Subsection is moved to proposed Subsection 17943 (af)(1)(C) and amended.

Subsection 17943 (b)(31)(C) The current Subsection is moved to proposed Subsection 17943 (af)(2) and amended.

Subsection 17943 (b)(31)(C)(1) The current Subsection is moved to proposed Subsection 17943 (af)(2)(A) and amended.

Subsection 17943 (b)(31)(C)(2) The current Subsection is moved to proposed Subsection 17943 (af)(2)(B) and amended.

Subsection 17943 (b)(31)(C)(3) The current Subsection is moved to proposed Subsection 17943 (af)(2)(C) and amended.

Subsection 17943 (b)(31)(D) The current Subsection is deleted. It is replaced, in part, by the source reduction compliance information in proposed Subsections 17945.3 (d)(2-5).

Subsection 17943 (b)(31)(D)(1) The current Subsection is deleted. Source reduction by resin switching is not allowed in the proposed regulations, pursuant to a careful review of statute and determination that giving compliance credit for changing to a different virgin resin is not consistent with several sections of the PRC as described in the Reasonable Alternatives to the Proposed Regulatory Action section on material type and resin switching as a compliance option. Source reduction compliance certification requirements are detailed in proposed Subsections 17945.3 (d)(2-5).

Subsection 17943 (b)(31)(D)(2) The current Subsection is moved to proposed Subsection 17943 (af)(3) and amended.

Subsection 17943 (b)(31)(D)(3) The current Subsection is moved to proposed Subsection 17943 (af)(4) and amended.

Subsection 17943 (c) “Container Line” This proposed Subsection is added for clarity as the term is used frequently in these regulations in describing how a product manufacturer is to determine its compliance (for example, in the compliance formulas in Section 17945.5). During the rulemaking process, stakeholders asked for clarification as to how the program viewed container and product lines. Including the definition in the regulations will help ensure consistent interpretation and submittal of accurate certifications by the regulated companies. This proposed definition was reviewed by stakeholders over the course of multiple workshops to confirm that it accurately described use of the term across industries and adequately addressed their concerns.

Subsection 17943 (d) “Container Manufacturer” This proposed Subsection is moved from current Subsection 17943 (b)(4) and amended. The current definition lacks clarity and has created confusion for both the product and container manufacturers as to who is a container manufacturer and who is responsible for meeting the program compliance requirements. The change is needed to eliminate this confusion and clarify which entities are container manufacturers. Container manufacturers are responsible for reporting RPPC information to product manufacturers (per the container manufacturer certification process specified in Section 17945.4), who, in turn, are responsible for completing the product manufacturer certification as specified in Section 17945.3 to document compliance with program requirements. The changes make the definition more similar to the statutory definition in PRC Section 42301 (a), but as with several other definitions in this Section, is repeated here for ease of reference by regulated companies. The phrase “the manufacturer” is replaced with the phrase “a company or a successor company that manufactures and sells” for clarity and consistency with statute. The word “manufactures” is included for clarity that it is a manufacturer, not a wholesaler of containers. The phrase “as defined in Section 17943(b)(30)” is deleted and replaced by “subject to” to clarify that the container manufacturer is one whose RPPCs are subject to this Article (not just to the definition of RPPC within the Article). The phrase “to a product manufacturer that sells or offers for sale in California any product held in that container” is added for greater clarity and consistency with statute. The word “California” is used, however, instead of “the state” for clarity as many of the manufacturers are based outside California. Finally, here (and elsewhere throughout the regulations) the term “packaged” is replaced with “held” for clarity, as the term “packaged” can have varied meanings in the regulated community.

Subsection 17943 (e) “Curbside Collection Program” This proposed Subsection is moved from current Subsection 17943 (b)(5) and amended. The term “homeowners” is replaced with “households” to reflect the statutory wording and the correct meaning, since curbside collection programs do not distinguish between owners and renters of homes. The term is included in regulations (i.e., repeated from statute, PRC 42301 (b)) for ease of reference by the regulated community.

Subsection 17943 (f) “Department” This proposed Subsection replaces current Subsection 17943 (b)(1). The proposed Subsection defines “Department” for clarity as the Department of Resources Recycling and Recovery. This revision is consistent with the passage of Stats.2009

c.21 (SB 63). SB 63 eliminated the Integrated Waste Management Board and the new Department of Resources Recycling and Recovery effective succeeded the Board and its authority on January 1, 2010.

Subsection 17943 (g) “Director” This proposed definition is added for clarity since the term is used throughout the regulations. The addition of this definition is consistent with the passage of Stats.2009 c.21 (SB 63). SB 63 eliminated the Integrated Waste Management Board and the new Department of Resources Recycling and Recovery succeeded the Board and its authority on January 1, 2010. The Department now operates under a Director, instead of a Board and Executive Director.

Subsection 17943 (h) “Final End User” This proposed Subsection is moved from current Subsection 17943 (b)(7) and amended for clarity. The final end user is simply the person (or entity) who removed the product from the RPPC and then discards or recycles the container. The end user is not necessarily the person or entity who bought the product nor the person or entity that eventually uses the product, so the phrase “person who purchases a rigid plastic packaging container in order to use the product held by the container” is deleted. The phrase “or entity that” replaces the terms “who” for clarity because product manufacturers indicated that the final end user of their products include individual citizens of California as well as firms, organizations, co-partnerships, government agency, industries, and others. The phrase “rigid plastic packaging” is added before the term “container” in two places for clarity and consistency of format throughout the regulations. The phrase “or recycles” is added after the phrase “and discards” for clarity that the user is the one who removes the product and discards or recycles the container. The definition for the term “person” is deleted as the Department will rely on the definition of “Person” in PRC Section 40170.

Subsection 17943 (i) “Material Type” This proposed Subsection is moved from current Subsection 17943 (b)(14) and amended. Both product and container manufacturers have stated that the current definition is confusing. This, in part, is due to the current definition’s focus on the very broad feedstock categories of paper, glass, plastic and aluminum. The existing language also specifically excludes “individual plastic resins” from the definition. Stakeholders have used the term material type to mean both broad categories (e.g., paper and glass), as well as individual resin types. In order to meet industry quality standards, each individual resin type is recycled separately and inclusion of another resin type (a contaminant) may prevent the recycled resin from meeting quality standards. The definition is amended to delete terms and phrases that do not include individual resin types: “broad”, “plastic or”, and ““Material type” does not mean individual plastic resins.” The phrases “but not limited to,” and “and individual plastic resins” are added to clarify that separate plastic resins constitute different material types. The phrase “for purposes of this Article” is added because “material type” may have different regulatory definitions in other State programs. These changes are necessary to ensure consistent use of this term within these regulations, including consistency with the definition of a “Source Reduced Container” in proposed Subsection 17943 (af). This is further described in the Reasonable Alternatives to the Proposed Regulatory Action section on material type and resin switching as a compliance option.

Subsection 17943 (j) “May” This proposed Subsection is moved from current Subsection 17943 (b)(13). This is a number change without regulatory effect.

Subsection 17943 (k) “Measurement Period” This proposed Subsection is moved from current Subsection 17943 (b)(15) and amended. The existing regulations do not clearly specify

the compliance time period, and product manufacturers requested clarification. The words “time period” are deleted and replaced with “calendar year” to clarify exactly what time period is covered by a measurement period. This change is consistent with PRC Section 42322 (d). The statement that the period may differ for those claiming the reuse or refill compliance options is deleted. The intent was to recognize that companies counting refills or reuse of containers may be doing so on their own “year” but not to provide them an alternative certification year as that would be extremely difficult to administer. The information on how product manufacturers report the time period for which they counted reuses or refills is now in Sections 17945.3 (d)(6)(D) and (d)(7)(C), respectively.

Reference to Section 17946 has been changed to 17945.2 to reflect the proposed new numbering, and additional sections added to capture all those which address the “certification or auditing process.” Section “17946.5” is deleted because the proposed changes modify the contents of Section 17946.5 to address exemptions and no longer directly relate to the certification process measurement period. The proposed second sentence has been streamlined to more clearly indicate that the first measurement period for any newly introduced products is the first partial calendar year in which they’re introduced for sale in California. The current text indicated a measurement period for new products longer than a calendar year and that is confusing since the same product manufacturer potentially can be selected for certification two calendar years in a row. The data should always be distinct to a given calendar year measurement period. Finally, grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (l) “Must” or “Shall” This proposed Subsection is moved from current Subsection 17943 (b)(18) and amended. The regulated community has complained that the current regulations are not clear whether there is a difference between the terms “must” and “shall.” The proposed addition of the words “or “Shall”” clarifies that both terms, “must” and “shall” mean that a provision is mandatory.

Subsection 17943 (m) “Newly Introduced Product” This proposed Subsection is moved from current Subsection 17943 (b)(10), “Introduced,” and amended. Stakeholders at the 2007 meetings said that the current definition was confusing; the amended definition addresses their concerns. Specifically, Statute allows a one-year waiver for manufacturers of products packaged in RPPCs that are introduced and sold after January 1, 1995 (PRC Section 42330 (c)). Many product manufacturers indicated that under the current regulations they would request waivers for “new” or “improved” products that involved only changes in container size, labeling or color. During the rulemaking process, stakeholders also commented that in the draft changes the terms “product” and “package” seemed to be used interchangeably and thus were confusing. Therefore, the terms “newly” and “product” have been added to the term being defined (currently “Introduced”), and the first sentence of the Subsection amended to remove the phrase “rigid plastic packaging container or” to clarify that the correct focus is on the product contained within an RPPC and not the characteristics of the RPPC itself. Here (and elsewhere throughout the regulations) the term “packaged” is replaced with “held” for clarity, as the term “packaged” can have varied meanings in the regulated community. Similarly, in the second sentence the term “packaging” is replaced with “rigid plastic packaging container” to give the accurate meaning, and the phrase “newly introduced” replaces “introduced” for consistent use of terminology.

Subsection 17943 (n) “Non-Source Reduced Container” This proposed Subsection is moved from current Subsection 17943 (b)(19) and amended. The phrase “rigid plastic packaging” is

added before the term “container” for clarity and consistent use throughout the regulations. Section references within the definition have been changed to refer to the correct Sections and Subsections in the proposed regulations. The definition continues to be necessary because the term “non-source reduced container” is used in Sections 17945.3, 17945.4 and 17945.5 of the regulations when comparisons are made between “source reduced containers” and “non-source reduced containers.”

Subsection 17943 (o) “Original Rigid Plastic Packaging Container” This proposed Subsection is moved from current Subsection 17943 (b)(20) and amended. Many product manufacturers indicated that a reference to an “original container” was confusing because an original container could be any material (e.g., glass, paper, etc.). The phrase “rigid plastic packaging” is added to the term to clarify that the regulations focus on RPPCs and not on all packaging containers (e.g., glass, paper, etc.). Current regulations refer to Section 17946.5 (b)(2) and (b)(3) but these sections now describe exemptions, not the product manufacturer certification process, so references to 17945.3 (d)(6) and (d)(7) have been added. The term “used” has been replaced with “stated” to avoid confusion since in these regulations “used” generally relates to product usage. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (p) “Particular Type Rigid Plastic Packaging Container” This proposed Subsection is moved from current Subsection 17943 (b)(21) and amended. The word “is” is replaced with “means” for consistency with the other definitions in these regulations. Since food products are exempt from the program, the example has been changed from “milk” to “all purpose cleaner” to avoid confusion.

Subsection 17943 (q) “Postconsumer Material” This proposed Subsection is moved from current Subsection 17943 (b)(23) and amended. Staff found that in past certification cycles most compliant manufacturers relied on use of post-industrial material to certify compliance through the 25 percent postconsumer material compliance option. Many of these certifications claimed compliance using material that had historically been reused within the manufacturing process as feedstock for new products, not post-industrial material that was destined for disposal or had been disposed. To be consistent with the statute, and address stakeholder questions and comments, additional language is added to clarify that post-industrial material commonly reused in the manufacturing process is not postconsumer material but that finished or rejected packaging destined for disposal may be considered postconsumer material. This is further described in the Reasonable Alternatives to the Proposed Regulatory Action section on Limitation on use of Post-Industrial Material to Meet Postconsumer Material Requirements.

The section has been re-organized for clarity. The second sentence of the current definition is moved to its own subsection 17943 (q)(3) for clarity. The third sentence of the current definition is moved to proposed Subsection 17943 (q)(1) for clarity. The final sentence is deleted so that post-industrial material is no longer included within the definition of postconsumer material. This amendment is consistent with both PRC Subsection 42301(g) and Public Contract Code (PCC) Section 12301(c).

Subsection 17943 (q)(1) This proposed Subsection is moved from 17943 (b)(23) for greater clarity as to what does and does not constitute postconsumer material for purposes of these regulations. The phrase “and post-industrial scrap” is deleted to address the problem identified in past certification cycles when product manufacturers often tried to claim credit for use of post-industrial scrap that was reused within the manufacturing process and was not commonly

disposed as postconsumer material in their products' containers, and to address stakeholder comments received during the rulemaking. The term "products" is replaced with the phrase "rigid plastic packaging containers or under the alternative compliance method in Section 17944.1," for clarity as the postconsumer plastic material under discussion is typically being used for new containers (or occasionally other plastic products per the alternative method) not "products" in general.

Subsection 17943 (q)(2) This proposed Subsection is added to further clarify what may be counted as postconsumer material. In 2011 public workshop discussions, product manufacturers, plastic recyclers, and environmental groups agreed that it would be appropriate to count, as postconsumer material, finished plastic packaging (not scrap) that has been rejected by a container or product manufacturer and is commonly disposed, if it is later used to make different containers (not reused in the original manufacturing and fabrication process). This allows, for example, counting as postconsumer the recycling and reuse of plastic material from containers that are never used (e.g., left unsold or warehoused due to newer stock coming available, or rejected) and are no longer within the original container manufacturing process.

Subsection 17943 (q)(3) This proposed Subsection is moved from 17943 (b)(23) to clarify what does and does not constitute postconsumer material for purposes of these regulations. Leaving this language in the definition addresses stakeholder questions and concerns regarding what does not constitute postconsumer material.

Subsection 17943 (r) "Product Associated Rigid Plastic Packaging Container" This proposed Subsection is moved from current Subsection 17943 (b)(24) and amended. For consistency with statute, the term "which" is replaced with "that." For clarity, the term "line" is replaced with "container" and in the second sentence "container" is replaced with "rigid plastic packaging container." Finally, since food products are not part of this program, the example of "salad dressing" is replaced with "liquid hand soap" to avoid confusion.

Subsection 17943 (s) "Product Line" This proposed Subsection is added, pursuant to discussions with stakeholders, to provide clarity in the regulations as to what constitutes a "product line" in contrast to a "container line." The program requires that product manufacturers certify compliance of the RPPCs they use, so it's important to clearly define both "product line" and "container line" to ensure consistent interpretation and submittal of accurate certifications by the regulated community. This proposed definition was reviewed by stakeholders over the course of multiple workshops to confirm that it accurately described use of the term across industries and adequately addressed their concerns.

Subsection 17943 (t) "Product Manufacturer" This proposed Subsection is added. In the current regulations (Section 17943 (b)(12)) the use of a single definition for both "manufacturer" and "product manufacturer" caused significant confusion for both the container manufacturers and the regulated product manufacturers as to who was responsible for complying with the law. The proposed regulations clarify that the term being defined relates to a product manufacturer using a regulated container and that a product manufacturer is responsible for compliance.

Specifically, the definition identifies both the various types of entities that might be a "product manufacturer" (i.e., "any person, partnership, association, corporation or any other entity") and the means by which they hold responsibility for producing a product sold or offered for sale in an RPPC in California (i.e., "through its own action or through contract or control"). This is

necessary to address past problems with identifying the responsible party and to ensure equal treatment of product manufacturers.

The RPPC law was one of the early laws addressing producer responsibility, and over the more than 20 years of implementing the RPPC program, the Department has gained experience and identified issues with determining the responsible party. The current definition in Subsection 17943 (b)(12) uses a hierarchy for determining who is responsible for complying—the product manufacturer, the distributor, or the importer—but often did not lead the Department to any responsible party. This was particularly an issue for retailer private labels where a company directs another company to produce a product and the manufacturer listed on the private label is not the company primarily responsible for the product's generation or sale.

Since 2002, when the RPPC regulations were last revised, there has been extensive debate and several new laws related to producer responsibility that address the types of issues that have occurred in identifying a responsible party under the RPPC regulations. The proposed changes in the definition of product manufacturer are generally consistent with the language used in the "producer" or "generator" definition in other environmental statutes such as the Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). They also provide the Department sufficient regulatory authority to identify the party that is primarily responsible for generating or producing a product.

Additionally, to ensure that companies are treated equally, the Department must have the ability to request compliance certifications from all regulated companies, including those that import and sell products in regulated containers in California. Product manufacturers are responsible for ensuring that both their domestic and overseas suppliers are using compliant containers and are subject to penalties if they are unable to document compliance with the compliance options for product manufacturers in PRC Section 42310. Some proactive product manufacturers are actively engaged with their overseas suppliers to ensure that they get the documentation they need from the overseas companies to document compliance. Yet historically, many product manufacturers stated that they were unable to get information from overseas suppliers, which resulted in the Department being unable to identify the party responsible for meeting the RPPC requirements.

To address these issues, proposed Subsections 17943 (t)(1) through (t)(2) provide additional factors that will be used in determining the party that is primarily responsible for generating or producing a product due to the ever changing nature of supply-chain dynamics. In addition, the proposed regulations provide a process in proposed Section 17945.1 that will notify a company that they are in a potential certification pool and allow them to demonstrate, prior to the certification cycle, that they are not product manufacturers as defined in this program and thus are not regulated by this program.

Subsection 17943 (t)(1) This proposed Subsection is added to state that "The Department shall consider the following factors in identifying a product manufacturer." The proposed Subsection clarifies and supports the new definition in Subsection 17943 (t) by providing factors that will be used in determining the party that is primarily responsible for generating or producing a product within a RPPC and thus is responsible for program compliance, to address the issues described in Subsection 17943 (t).

Subsection 17943 (t)(1)(A) This proposed Subsection is added to read “The ownership of the brand name of the product in the rigid plastic packaging container.” The brand name ownership is an important factor in determining the party that is primarily responsible for compliance as that party is often the one responsible for generating or producing a product within a RPPC and putting the product into the stream of commerce. Including this factor helps address the issues described in Subsection 17943 (t).

Subsection 17943 (t)(1)(B) This proposed Subsection is added to read “Primary control or influence over the design of the product in the rigid plastic packaging container.” Control over product design is another factor important in determining the party responsible for compliance and addressing the issues described in Subsection 17943 (t). The company with primary control or influence over the design of the product in the RPPC may also be primarily responsible for the product’s generation and putting the product into the stream of commerce.

Subsection 17943 (t)(1)(C) This proposed Subsection is added to read “Primary control or influence over the design specifications of the rigid plastic packaging container.” Control over container design is a third key factor in determining the party responsible for compliance and addressing the issues described in Subsection 17943 (t). The company with primary control or influence over the design specifications of the RPPC may also be the company primarily responsible for the product’s generation and putting the product into the stream of commerce.

Subsection 17943 (t)(2) This proposed Subsection is added to clarify that “Any entity that has a legally recognized corporate relationship (i.e., parent/subsidiary or affiliate relationship) with a product manufacturer shall be allowed to assume the responsibilities of the product manufacturer as they relate to the requirements of this Article.” The current regulation related to this topic (Subsection 17943 (b)(12)(C)) limits the assumption of responsibility by a related corporate entity to container compliance specified in current Section 17944. This proposed Subsection broadens the option for assumption of responsibility by a related corporate entity to comply with all aspects of the RPPC regulations, and helps ensure that someone will clearly take responsibility for compliance, including under the new alternative compliance method per PRC Section 42310.3.

Subsection 17943 (u) “Product Sub-Line” This proposed Subsection is added, pursuant to discussions with stakeholders, to provide clarity in these regulations as to what constitutes a “product sub-line” in relation to a “product line” and a “container line.” The program requires that product manufacturers (not container manufacturers) certify compliance of their containers, so it’s important to clearly define “product line” and “product sub-line,” as well as “container line,” to help ensure consistent interpretation and submittal of accurate certifications by the regulated community. This proposed definition was reviewed by stakeholders over the course of multiple workshops to confirm that it accurately described use of the term across industries, and adequately addressed their concerns.

Subsection 17943 (v) “Recycled” This proposed Subsection is moved from current Subsection 17943 (b)(25). The term “which” is replaced with “that” for consistency with statute as no difference is intended. Additionally, the phrase “in a landfill” is deleted as “disposal” includes other possibilities such as incineration. This will preclude manufacturers from attempting to claim as “recycled” material that has been disposed by burning. It should be noted that this term is used frequently in the regulations and is therefore largely repeated from statute (PRC 42301 (h)) for ease of stakeholders’ reference.

Subsection 17943 (w) “Recycling Rate” This proposed Subsection is moved from current Subsection 17943 (b)(26) and amended into a simpler format, more consistent with the statutory definition (PRC 42301 (i)) but still included here for ease of stakeholder’s use. The introductory Subsection now includes the language regarding “the proportion (as measured by weight, volume or number) of” and “types of containers sold or offered for sale in California and being recycled in a given calendar year” that currently is repeated in each individual subsection and makes the definition hard to follow. Eliminating the repetition makes the definition clearer and easier to read.

Subsection 17943 (w)(1) This proposed Subsection is moved from current Subsection 17943 (b)(26)(A) and amended to clearly list one of the types of containers (particular type RPPCs) that can be used for measuring the recycling rate as described in 17943 (w). Additionally, to simplify the format of the subsection, language regarding “the proportion...given calendar year” has been deleted and incorporated within 17943(w). The sentence regarding recycling rate calculation is deleted. The regulations have been re-organized so all calculations are now in Section 17945.5.

Subsection 17943 (w)(2) This proposed Subsection is moved from current Subsection 17943 (b)(26)(B) and amended to list another of the types of containers (product-associated RPPCs) that can be used for measuring the recycling rate as described in 17943 (w). Additionally, to simplify the format of the subsection language regarding “the proportion....given calendar year” has been deleted and incorporated within 17943 (w).

Subsection 17943 (w)(3) This proposed Subsection is being added to implement the requirements of, and ensure consistency with, PRC Section 42301 (i)(3) and PRC Section 42310 (b) as added by SB 743 (Chesbro, Chapter 666, Statutes 2005). This Subsection adds the new statutory option of calculating the recycling rate by determining the proportion of single resin specific RPPCs.

Subsection 17943 (x) “Refillable Rigid Plastic Packaging Container” This proposed Subsection is moved from current Subsection 17943 (b)(27) and amended. To maintain consistency within the proposed regulations, the term has been edited to delete the word “package” and add the phrase “rigid plastic packaging container.” The new phrase also clarifies that the regulations’ focus is on RPPCs and not on all types of packaging.

The phrase “which the Board determines” is deleted and replaced with the word “that” to limit this statement to this definition as the compliance process determinations are described elsewhere in the regulations. To simplify the definition, the phrase “or its agent” is added to the sentence dealing with product manufacturers and the separate sentence, “For the purpose of this program, the product manufacturer or the product manufacturer’s agent may refill a package,” is deleted. Finally, to clarify that the refill product would replenish the contents of the package with the same product (consistent with PRC Subsection 42301(c)), the phrase “to replenish the contents of” and “rigid plastic packaging container” are added to the definition and the phrase “product held by the package” is deleted. Grammatical amendments (e.g., capitalization) have also been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (y) “Replacement Product” This proposed Subsection is moved from current Subsection 17943 (b)(28) and amended for clarity in how it relates to the definition of “Reusable RPPC.” Specifically, the phrase “by a product manufacturer” is added to clarify who

sells the product, and the term “rigid plastic packaging” is added before container to clarify the type of regulated container consistent with the term’s use throughout the regulations. The phrases “that it be removed from its package in order” and “that a consumer purchased that previously held the identical” are deleted because they are not necessary in this definition. The words “sold by that same” and “manufacturer” are added to more clearly and simply describe that the replacement product is sold by the same product manufacturer as the original product. This is consistent with PRC Section 42301 (d). Grammatical amendments (e.g., capitalization) have also been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (z) “Reusable Rigid Plastic Packaging Container” This proposed Subsection is moved from current Subsection 17943 (b)(29) and amended. To maintain consistency within the proposed regulations, the term being defined has been edited to delete the word “package” and add the words “rigid plastic packaging container.” The new phrase also clarifies that the regulations focus is on RPPCs and not on all types of packaging.

The phrase “which the Board determines” is deleted and replaced with the word “that” to limit the statement to this definition as the compliance process determinations are described elsewhere in the regulations. The phrase “by consumers” is deleted as the definition of reusable container should apply to whoever reuses it. The phrase “to store the original” is replaced by “where the reuse is to hold a replacement” to clarify that “reuse” means using the container with a replacement product, not to permanently store the original product. In past certification cycles, several product manufacturers claimed compliance with the requirements of PRC 42310(c) because the container was intended to be used to permanently store the original product sold in that container, so consumers took the product out and “reused” the container when they put the same original product back in the container. However, within past certification cycles the compliance claim could not always be substantiated. Therefore revisions were made to clarify this term and thereby avoid confusion in future certification cycles. A proposed second sentence “A reusable rigid plastic packaging container does not refer to a container that is intended to be used or may be used to permanently store the original product sold in that container.” is also added for clarity. The revised regulation clarifies this issue by defining original product to also include replacement product because there has been confusion over the meaning of this term in the past. These changes are consistent with PRC Section 42301 (d). This is further described in the Reasonable Alternatives to the Proposed Regulatory Action section on reusable rigid plastic packaging containers. Grammatical amendments (e.g., capitalization) have also been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (aa) “Rigid Plastic Packaging Container” This proposed Subsection is moved from current Subsection 17943 (b)(30) and amended. The acronym “(RPPC)” is added to the term defined for clarity as the acronym is extensively used in the program materials. The term “package” is replaced with “packaging container” for consistency of terminology throughout these regulations. The phrase “the state” is replaced with “California” for clarity as much of the regulated community is based outside of California. Additional clarifications to the definition, pursuant to discussions with stakeholders, are made in the following subsections.

Subsection 17943 (aa)(1) This proposed Subsection is moved from current Subsection 17943 (b)(30)(A) and amended. The proposed amendments are necessary to provide clarity and to set the same standards for containers that have the same landfill disposal impacts and capacity for being source-reduced or made of postconsumer material but have just a slightly different

design. Under the current regulations' definition of a RPPC, some containers are regulated while other almost identical containers are not regulated. This creates an inequity, and companies using heat-sealed containers receive a competitive advantage over companies using non-heat-sealed regulated containers as the former don't have to comply with this Article. To address this inequity, the Subsection has been edited to delete the words "multiple re-closure" and add the words "at least one closure (including but not limited to closure occurring during the production or manufacturing process)". The proposed edits eliminate the inequity and are consistent with PRC 42301(f). Some product manufacturers say sealed clamshells are chosen for protecting product quality, anti-theft and retail benefits. PRC 42301(f) does not provide authority to distinguish between protective qualities and requirements related to RPPCs.

For clarity, the end of this Subsection ("with the exception of manufacturer's discretion") is deleted, and the examples of exceptions moved to newly lettered Subsections 17943 (aa)(1)(A) and (B). Because of this proposed reformatting, Subsection 17943 (aa)(1) is also amended to add the words "except that rigid plastic packaging containers may have:" to provide a transition to the proposed Subsection 17943 (aa)(1)(A) and (B).

Subsection 17943 (aa)(1)(A) This proposed Subsection is added to clearly identify the other incidental packaging elements such as "Caps, lids, labels, handles, hinges, and other incidental packaging" that need not be made of plastic for the container to still be a RPPC. This proposed amendment is necessary to eliminate inequities and apply the same compliance standards for identical containers which only differ in their incidental packaging elements such as handles and hinges. For example, under the current regulations' definition of a RPPC, all-plastic containers with a plastic handle or hinge are regulated while identical containers that have a metal handle or hinge are not regulated. This gives product manufacturers that use non-plastic incidental packaging elements a competitive advantage and allows disparate treatment of similar containers with the same landfill disposal impacts and capacity for being source-reduced or made of postconsumer material just with a slightly different design. The proposed change remedies this disparity. For clarity, the proposed formatting keeps non-plastic incidental materials associated with a container in Subsection 17943 (aa)(1)(A), and the additives in Subsection 17943 (aa)(1)(B).

Some product manufacturers have said that the change appears to contradict the intent of the law that regulated containers be made entirely of plastic. PRC Section 42301 (f) states that a "rigid plastic packaging container" must be "plastic." The current regulation includes exceptions to the container being entirely made of plastic, so staff finds that it is still a reasonable interpretation to find that if the container is primarily made of plastic, but incorporates incidental non-plastic parts, or integral additives, then the container is still, by its nature, "plastic." The Department finds the proposed amendment is consistent with PRC Subsection 42301(f).

Subsection 17943 (aa)(1)(B) This proposed Subsection is added to read: "Additives such as pigments, colorants, fillers, and stabilizers that are part of the plastic polymer compound." This change is necessary to clarify that when additives such as these are used in manufacturing the container, they are considered an integral part of the container and that container would not be excluded from the requirements due to varying additives. This is consistent with the exception in existing regulations Subsection 17943 (30)(A). The proposed formatting lists materials that are part of the plastic polymer compound in the container in the same Subsection. The proposed amendment is consistent with PRC Section 42301 (f).

Subsection 17943 (aa)(2) This proposed Subsection is added to read: “Plastic caps, lids, handles, and hinges may be included as part of a rigid plastic packaging container at a product manufacturer’s discretion.” This proposed Subsection clarifies the specific types of incidental packaging elements that product manufacturers may consider to be parts of a container when taking the various measurements needed to determine whether the product manufacturer meets the compliance requirements per proposed Sections 17945.3 and 17945.5. This flexibility is necessary as sometimes it is difficult or impossible for a product manufacturer to separate the incidentals from the container itself for such purposes as weighing the container, and the difference is usually insignificant.

Subsection 17943 (aa)(3) This proposed Subsection is added to read: “A plastic packaging container shall be considered to have a “relatively inflexible or finite shape or form” if:” Over the years (as well as in stakeholder comments during this rulemaking process), there have been many questions about whether certain plastic packaging meets the definition of an RPPC when it is not the same shape at all times. For example, some acetate containers that are not designed to be folded or collapsed when empty are regulated while almost identical containers that are designed to be folded or collapsed when empty are not regulated. This inequity gives product manufacturers that use foldable or collapsible plastic packaging a competitive advantage. To address this inequity, the proposed amendment sets the same RPPC compliance standards for almost-identical containers instead of allowing disparate treatment between similar containers with the same landfill disposal impacts and capacity for being source-reduced or made of postconsumer material. The proposed Subsection, along with Subsections 17943 (aa)(3)(A) and (B), are added to clarify PRC Section 42301 (f) that says a RPPC must have a “relatively inflexible finite shape or form....that is capable of maintaining its shape while holding other products.”

Subsection 17943 (aa)(3)(A) This proposed Subsection is added to provide the necessary clarification that a RPPC maintains essentially the same shape empty as full, even if it is designed to be folded or collapsed into a more compact form for transportation and shipping purposes when not holding a product but returns to the original shape when holding product. This proposed amendment is necessary to address stakeholder questions about foldable containers, and to set the same RPPC compliance standards for almost identical containers that have just a slightly different design but the same landfill disposal impacts and capacity for being source-reduced or made of postconsumer material. The proposed amendment is consistent with PRC Subsection 42301(f).

Subsection 17943 (aa)(3)(B) This proposed Subsection is added to clarify that a RPPC is not composed of “film plastic” materials such as the materials that are commonly used to wrap multiple products on a pallet or to carry out purchased products. Flexible packaging containers tend to collapse or change shape if not containing a product so they do not meet the requirements of PRC Section 42301 (f) that say a RPPC must have a “relatively inflexible finite shape or form....that is capable of maintaining its shape while holding other products.” Reference to the American Society for Testing and Materials (ASTM) D6988.8 Guidelines for film plastic is added to provide a clear standard for the regulated community.

Subsection 17943 (aa)(4) This proposed Subsection is moved from current Subsection 17943 (b)(30)(B) and amended. The current Subsection did not accurately reflect how different products (such as paints and cleaners or staplers and paperclips) are sold and measured (liquid volume or quantity). Paints and cleaners are typically sold by volume, but staplers and paperclips are sold by number. To accurately reflect how the measurement is achieved the

words “total volume of the closed” are deleted and replaced with “capacity of a rigid plastic packaging container.” The phrase “will establish if the container is within the eight ounce to five gallon size requirements” is deleted and replaced with “shall be determined as follows” for a clear transition to the details on measuring, now moved to Subsections (aa)(4)(A) and (B) for greater clarity. These amendments clarify how capacity is measured to determine if a container meets the RPPC definition, and are consistent with PRC Subsection 42301 (f) which specifies that the measurement determination is based on the capacity of the container itself and not on the quantity of product in the container.

Subsection 17943 (aa)(4)(A) This proposed Subsection is moved from current Subsection 17943 (b)(30)(B) and amended for clarity. This Subsection describes the range of volume for “containers measured in liquid or fluid volume.” The word “fluid” is added to the phrase “labeled volume” and the term “volumetric volume” is replaced with “equivalent volume” for clarity and consistency of terminology in these regulations. The numbers for the milliliter equivalent to eight fluid ounces and liter equivalent to five gallons are both updated for consistency with the online conversion calculations that may be referenced by the regulated community.

Subsection 17943 (aa)(4)(B) This proposed Subsection is moved from current Subsection 17943 (b)(30)(B) and amended for clarity. This Subsection describes how to measure containers “labeled and sold by weight or item count.” The term “volumetric equivalent” is replaced by “equivalent volume” for clarity and consistency of terminology throughout the regulations.

Subsection 17943 (ab) “Signature” or “Signed” This proposed Subsection is added to clarify what constitutes a “signature,” consistent with similar language in other Department regulations. Adding the language during this rulemaking will remove the need to amend the regulations at such future time as the Department begins accepting electronic signatures for the RPPC program. This Subsection introduces the listing of what constitutes a “signature” or “signed” in the following Subsections.

Subsection 17943 (ab)(1) This proposed Subsection is added to state that a “signature” or “signed” can refer to an original handwritten signature. This clearly provides for the continuing use of handwritten certifications in the program, whether or not electronic signatures are also permitted. This maintains this option for companies that may not now (or at some future date) have the capability to submit electronic certifications to the Department.

Subsection 17943 (ab)(2) This proposed Subsection is added to state that a “signature” or “signed” can also refer to an electronic signature, and provides the definition of what comprises an electronic signature consistent with other Department programs. While the RPPC Program does not yet have the capability to accept electronic certifications, it may in the future, and this provides the necessary language to define what will be allowed.

Subsection 17943 (ab)(2)(A) This proposed Subsection is added to provide further details about what comprises an electronic signature. Specifically, it states that an electronic signature consists of a unique username and password or other security measures as required by the Department. This Subsection is needed for clarity and consistency in acceptance of electronic signatures across various Department programs.

Subsection 17943 (ab)(2)(B) This proposed Subsection is added to clearly state that an electronic signature cannot be denied solely on the ground that it is electronic. This is needed

for clarity and consistency in acceptance of electronic signatures across various Department programs.

Subsection 17943 (ab)(2)(C) This proposed Subsection is added to clearly state that an electronic signature is as binding as a handwritten one. This is needed for clarity and consistency in acceptance of electronic signatures across various Department programs.

Subsection 17943 (ac) “Similar Rigid Plastic Packaging Containers” This proposed Subsection is moved from current Subsection 17943 (b)(31)(B)(3) and amended. The existing regulations were re-organized to eliminate definitions within other definitions. The term is used in multiple locations in the regulations, such as in the definition of source reduced container (Section 17943 (af)(1)(C)) and the source reduction compliance option (Section 17945.3 (d)(5)). It is necessary to clarify that for the source reduction comparison to similar products compliance option, similar products must be in similar RPPCs that are held by particular type RPPCs. Additionally, being in its own Subsection will make it easier to locate.

Subsection 17943 (ad) “Single Resin Type” This proposed Subsection is added to integrate the requirements of and to be consistent with the passage of Stats.2005 c.666 (SB 743). SB 743 added the term to the statutory definition of recycling rate and specified that a recycling rate for single resin type RPPCs is now allowed. The definition now reads ““Single Resin Type” means made up of only one of the types of plastic resin outlined in Public Resources Code Section 18015.” The term is defined here for clarity as RPPCs made from single plastic resins may be included in recycling rates as specified in Subsection 17943 (w)(3).

Subsection 17943 (ae) “Sold or Offered for Sale” This proposed Subsection is added for clarity as this phrase is used throughout the regulations and there has been confusion in the past. This definition is consistent with Public Resources Code Section 42310 that requires every RPPC “sold or offered for sale” in California to meet one of the compliance criteria. In the past, some product manufacturers have claimed that they were not subject to the requirements of the RPPC law as they do not have a storefront within California and only sell using the Internet. To ensure equitable treatment consistent with PRC 42310, all products in RPPCs “sold or offered for sale” in California need to meet the same requirements. This is also consistent with the approach taken by the California State Board of Equalization (BOE) that sales over the Internet by out-of-state companies are subject to California’s use tax. The BOE regulates the transaction and the subject of the transaction rather than regulating the internet itself (as explained further in BOE’s Publication 112, *Purchases from Out-of-State Vendors*).

Subsection 17943 (af) “Source Reduced Container” This proposed Subsection is moved from current Subsection 17943 (b)(31) and amended. The opening phrase has been amended to delete “either of the following” and Subsections (b)(31)(A), (A)(1) and (A)(2) because the references to the 1990 – 1994 timeframe packaging requirements are now obsolete. Further amendments and additions are proposed in subsequent subsections to clarify source reduction requirements and the factors that the Department will consider in making a determination of compliance with source reduction requirements. These address many past issues with compliance documentation submitted for source reduction. Grammatical and/or punctuation amendments (e.g., capitalization) have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (af)(1) This proposed Subsection is moved from current Subsection 17943 (b)(31)(B) and amended. The phrase “for which the manufacturer seeks compliance after

January 1, 1995,” is deleted, as the reason for including the date was to distinguish the source reduced requirements for RPPCs that applied in 1990-1994 from requirements which applied starting in January 1995. Since the obsolete 1990-1994 requirements have been deleted, it is no longer necessary to make this distinction in dates. The term “package” is replaced by “container” and the phrase “use of product” replaced by “per number of product uses” for clarity and consistent use of terminology in the regulations. The phrase “this State” is replaced by “California” consistent with changes made throughout the regulations.

Subsection 17943 (af)(1)(A) This proposed Subsection is moved from current Subsection 17943 (b)(31)(B)(1) and amended. The term “packaging” is replaced with “rigid plastic packaging container” for clarity and consistent use of terminology throughout these regulations. Additionally, the word “product” is added to clarify that it is the product manufacturer (not container manufacturer) that is responsible for complying with the program requirements. This is consistent with changes made throughout the proposed regulations. The word “on” is replaced by “as of” for clarity in reference to the date. The phrase “this State” is replaced by “California” consistent with changes made throughout the regulations.

Subsection 17943 (af)(1)(B) This proposed Subsection is moved from current Subsection 17943 (b)(31)(B)(2) and amended. The term “packaging” is replaced with “rigid plastic packaging container,” and phrase “the state” with “California,” for clarity and consistency throughout these regulations. The word “that” is replaced by “the” for clarity. The term “product” is added to clarify that it is the product manufacturer (not container manufacturer) that is responsible for complying with the program requirements. This is consistent with changes made throughout the proposed regulations. Also the term “product’s” is added for clarity as to what is being referred to as having a “first full year of commerce.”

Subsection 17943 (af)(1)(C) This proposed Subsection is moved from current Subsection 17943 (b)(31)(B)(3) and amended. The term “packaging” is replaced with “rigid plastic packaging container” for clarity and consistency in the regulations. The word “that” is deleted and replaced with the words “during the” as the compliance timeframe is not clear in the current regulations. The phrase “in similar rigid plastic packaging containers by the product manufacturer or other product manufacturers that are held by “particular type rigid plastic packaging containers,” as defined in this Article,” is added to clarify that, for purposes of source reduction, the packaging may be compared to other similar packaging used by the product manufacturer or other product manufacturers for a certain type of product, such as soap. Finally, the amendment deletes the last two sentences regarding what constitutes “similar products” to avoid confusion as it’s actually the similar products in similar containers (not just products) that must be compared to assess compliance, and this is already clarified in the earlier sentence of this Subsection and by the addition of a definition of similar RPPCs in Subsection 17943 (ac).

Subsection 17943 (af)(2) This proposed Subsection is moved from current Subsection 17943 (b)(31)(C) and amended. Stakeholders were confused about whether the definition of source reduced container applied to all of the RPPC regulations. So the word “chapter” is deleted and the word “Article” is added to clarify that the definition applies throughout the RPPC regulations, not just a portion of the regulations. The word “packaging” is deleted as unnecessary and potentially confusing as it can refer to other types of packaging than RPPCs.

Subsection 17943 (af)(2)(A) This proposed Subsection is moved from current Subsection 17943 (b)(31)(C)(1) and amended. The word “which” is replaced with “that” for consistency with

PRC 42301 (j)(2)(A) as there is no intentional difference. As with other terms in Section 17943, this item is repeated from statute for ease of reference by the regulated community.

Subsection 17943 (af)(2)(B) This proposed Subsection is moved from current Subsection 17943 (b)(31)(C)(2) and amended. The phrase “use of product” is deleted and replaced by “per number of product uses” for greater clarity and consistency of how source reduction is described throughout these regulations.

Subsection 17943 (af)(2)(C) This proposed Subsection is moved from current Subsection 17943 (b)(31)(C)(3) and amended. The term “Board” is deleted and replaced by “Department” since the Department succeeded the Board as of January 1, 2010. The word “product” is added before “manufacturer” to clarify that the requirements apply to product manufacturers, not container manufacturers. The phrase “as well as other available information” is added to clarify that the Department may use various sources of information, not just what the product manufacturer submits with its certification, to make an objective determination as to whether a claimed source-reduced RPPC meets the compliance requirements and/or whether the packaging change adversely affects the potential for the RPPC to be recycled or made of postconsumer material. Finally, grammatical and punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (af)(3) This proposed Subsection is moved from current Subsection 17943 (b)(31)(D)(2) and amended. To be consistent with the “Rigid Plastic Packaging Container” definition of what constitutes rigid and flexible packaging, the word “flexible” is deleted and replaced with “non-rigid.” Additionally, the words “Container Requirements” are deleted for consistency in referencing throughout the regulations. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17943 (af)(4) This proposed Subsection is moved from current Subsection 17943 (b)(31)(D)(3) and amended. The modifications in this Subsection clarify how a product manufacturer can obtain credit for eliminating use of a RPPC through source reduction by using the averaging compliance method. To be consistent with the format used throughout the proposed regulations the phrase “the same” is deleted and replaced with “that.” Additionally, the word “regulated” is added to clarify to what containers the source reduction may be credited. The phrase “used by the product manufacturer” is added to further clarify that the regulations place responsibility for complying with requirements on the product manufacturers and not container manufacturers. Finally, the words “Container Requirements” are deleted for consistency in referencing throughout the regulations.

Subsection 17943 (ag) “Successor Company” This proposed Subsection is added for clarity. The product manufacturers regulated by this program frequently merge, sell, and otherwise change form through acquisitions and/or takeovers so this term is defined here for clarity as to how it’s used in these regulations.

SECTION 17944 Container Requirements.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The current Subsections are amended for clarity and to reflect new statutory requirements. Changes made reflect new statutory requirements, clarify waiver requirements, add language regarding single resin type recycling option and option for resin type, add language for defining reusable packaging as one that is routinely reused at least five time, and further clarify reuse is for the purposes of storing a replacement product. Finally, grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17944 (a) The current Subsection is amended to delete the question and answer format. During the 2007 meetings, stakeholders said the question and answer format of the regulations was confusing. Additionally, the phrase “except a rigid plastic packaging container that is exempt under Section 17946.5 of this Article,” is added to clarify that RPPCs, except those exempt containers, must meet the program requirements. This clarification is consistent with the requirements of PRC Section 42340. Finally, the term “the state” is replaced with “California” for clarity and consistency throughout the regulations as much of the regulated community are based out-of-state.

Subsection 17944 (a)(1) The current Subsection is amended to more clearly state the means for compliance using the postconsumer material option. The phrase “and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration” is added to address product manufacturer comments that the current regulations lack clarity regarding the compliance options for RPPCs. These manufacturers indicated they may not be able to meet the 25 percent postconsumer material requirement while meeting other state and/or federal requirements but the 25 percent postconsumer material requirement is mandated by PRC Section 42310 and cannot be changed in regulation. This clarification is consistent with the requirements of PRC Section 42330 (a)(1) that allows waivers of postconsumer material requirements when the container with 25 percent postconsumer material cannot remain in compliance with applicable Food and Drug Administration (FDA) regulations. The FDA exemptions remain in the proposed regulations under Section 17946.5 (a)(2) with references to the definitions for each particular term as they appear in federal statute.

The sentence “If it is technologically infeasible for a rigid plastic packaging container to meet this requirement, such a container must comply with another compliance option within this section.” is added to address additional stakeholder concerns raised in the 2007 meetings. Specifically, product and container manufacturers commented that they may not be able to meet the 25 percent postconsumer material requirement due to technological barriers. One example given by industry is that when experimenting with 25 percent of an unknown postconsumer resin, or a resin of unknown quality, the plastic may not stand up to various “stress crack” testing. This proposed amendment acknowledges this concern but clarifies that RPPCs must meet one of the other compliance options if they can’t meet the 25 percent postconsumer material compliance option in order to still comply with statute. The use of postconsumer material is only one of several statutory options for compliance.

Subsection 17944 (a)(2) The current Subsection is amended for clarity to read: “Be recycled at a 45 percent recycling rate if a product-associated rigid plastic packaging container, particular-type rigid plastic packaging container, or a single resin type rigid plastic packaging container.”

and deletes phrase “one of the following rates.” Product manufacturers commented that the current regulations lack clarity regarding RPPC compliance options. This proposed amendment simplifies the wording of the existing regulation and also adds the new recycling rate option for single resin type RPPCs (added by Statutes of 2005, Chapter 666, Senate Bill 743) to be up to date with the requirements of PRC Section 42310 (b).

Subsection 17944 (a)(2)(A) The current Subsection is deleted and replaced by information on the 45 percent recycling rate for product associated RPPCs contained in proposed Subsection 17944 (a)(2).

Subsection 17944 (a)(2)(B) The current Subsection is deleted and replaced by information on the 45 percent recycling rate for particular type RPPCs contained in proposed Subsection 17944 (a)(2).

Subsection 17944 (a)(3) The current Subsection is amended. Product manufacturers commented that the current regulations lack clarity regarding RPPC compliance options. By adding the phrase “rigid plastic packaging container” after the words “reusable” and “refillable” this amendment clarifies that these compliance options only apply to RPPCs. Additionally, grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17944 (a)(4) The current Subsection is amended. The phrase “rigid plastic packaging” is added before the term “container” for clarity and consistency of terminology throughout the regulations.

Subsection 17944 (a)(5) The current Subsection is amended. The phrase “rigid plastic packaging” is added before the terms “container” or “containers” for clarity and consistency of terminology throughout the regulations. Additionally, the statement “For purposes of this section, rigid plastic packaging containers that are “sold or offered for sale” in the state refers to rigid plastic packaging containers that are manufactured on or after January 1, 1995, and subsequently sold or offered for sale in California” is deleted. The current regulations are unclear as to whether this definition applies to just the container requirements section, or the whole regulations package. To improve consistency and clarity that “sold or offered for sale” applies to the entire Article, this language is replaced by the proposed definition in Section 17943(ae).

Subsection 17944 (b) The current Subsection is amended. The question and initial statement in the response are deleted. During the 2007 meetings, stakeholders said the question and answer format of the regulations was confusing.

At 2007 meetings stakeholders said that the current regulation is not consistent with PRC Section 42310 that allows the use of averaging for each compliance option. So this Subsection is further amended to clarify how and when compliance may be based on averaging. The wording of the existing paragraphs is simplified and combined to help improve the clarity. The phrase “for its containers” and the sentence “This average shall only be allowed for rigid plastic packaging containers for which the same compliance option is used” are deleted. In the subsequent sentence the word “Averaging” is replaced with “Averages” for grammatical correctness. Product and container manufacturers said the current Subsection is confusing as to what containers can be used for averaging, so the phrase “rigid plastic packaging” is added before the word container(s) to clarify that only RPPCs are included in these averages. Since

the regulations include several methods of calculating an average, and they can be based on either containers sold, recycled, or sold and recycled in California and/or nationwide, the phrase “data on” is added, and the word “/or” is added between sold and recycled. The statement, “Manufacturers may average the source reduction, postconsumer material, refill, or reuse options to express compliance for the containers they use.” is deleted and replaced with the statement “Averages shall be calculated for postconsumer material using the formula in Section 17945.5(b)(2), for source reduction using the formulas in Section 17945.5(d)(4), for reuse using the formula in Section 17945.5(e)(2), and for refill using the formula in Section 17945.5(f)(2),” to clearly state where the formulas are located in the proposed regulations.

The changes in the current second paragraph clarify that a product manufacturer’s average may be based on its entire product line or separated into product sub-lines but that all containers have to be accounted for in the averaging calculations. To clarify who is responsible for complying, the word “product” is added before “manufacturer’s.” Additional clarification is provided by deleting the word “any”, while adding “separated into product” and deleting the phrase “determined by the manufacturer.” For correct grammar, the last sentence is amended to delete “averaging is” and replace it with “averages are.” The phrase “to achieve compliance” is added to clarify the purpose of averaging, “every” is replaced with “all” for more consistent terminology, and the terms “included” and “in an average or comply through a separate compliance alternative” are deleted and replaced with “accounted for in the calculation or must comply through another compliance option.”

Finally, grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

SECTION 17944.1 Alternative Container Compliance Method.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

This section is added to outline how a product manufacturer may demonstrate compliance under the alternative compliance methods. The alternatives (to the methods outlined in Section 17944) are allowed per PRC Subsection 42310.3 (a) as added by Statutes of 2005, Chapter 666, Senate Bill 743 and Statutes of 2006, Chapter 144, Senate Bill 1344, and are included in the regulations for clarity and ease of reference by the regulated community.

Subsection 17944.1 (a) This proposed Subsection is added to introduce the means by which a product manufacturer may demonstrate RPPC compliance through its own actions or those of another company under the same corporate ownership during the compliance period. The subsequent two subsections detail the two compliance alternatives.

Subsection 17944.1 (a)(1) The proposed Subsection is added. It describes how a product manufacturer, or another company under the same corporate ownership, may demonstrate compliance with the RPPC requirements by using California-generated postconsumer plastic in RPPCs or other plastic products or packaging. The Subsection specifies that the amount of California postconsumer plastic used must be equal to, or exceed, the amount that the product manufacturer’s RPPC(s) would be required to contain to meet one of the compliance options in Section 17944. This amendment is consistent with PRC Subsection 42310.3 (a)(1) but is repeated here in the regulations for clarity and ease of reference.

Subsection 17944.1 (a)(2) The proposed Subsection is added. It describes how a product manufacturer may demonstrate compliance with the RPPC requirements by contracting with another company under the same corporate ownership for the purchase and consumption of California-generated postconsumer plastic exported to another state for use in manufacturing RPPCs, or other plastic products or packaging. The Subsection also specifies that the amount of California postconsumer plastic used must be equal to, or exceed, the amount that the product manufacturer's RPPC(s) would be required to contain to meet one of the compliance options in Section 17944. This requirement is consistent with PRC Section 42310.3 (a)(2) but is repeated here in the regulations for clarity and ease of reference.

SECTION 17944.2 How Will Waivers Be Granted?

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The current Section and all its Subsections are deleted. The regulations have been reorganized and this section is replaced by information contained in proposed Section 17946, Waivers, and proposed Section 17946.5 Exempt Rigid Plastic Packaging Containers. For clarity and consistency throughout the regulations, the section symbol in the title is replaced with the term "Section" as the title will remain in the official copy along with the history of the regulation.

Subsection 17944.2 (a) The current Subsection is deleted to improve clarity. Throughout the rulemaking stakeholders said the question and answer format of the regulations was confusing. The question and response are deleted and replaced by information contained in proposed Section 17946, Waivers.

Subsection 17944.2 (a)(1) The current Subsection is deleted. The current section addresses containers that are exempt from the requirements because they must remain in compliance with applicable state and federal regulations including United States Food and Drug Administration regulations (PRC 42330 (a)(1)). The regulations have been reorganized and this Subsection is replaced, in part, by exemption requirements in proposed Subsection 17946.5 (a)(2), and by clarification to the postconsumer material requirement in Subsection 17944 (a)(1).

Subsection 17944.2 (a)(2) The current Subsection is deleted and replaced by information in Subsection 17944 (a)(1). The current Subsection is not consistent with the requirements of PRC Section 42330 (a) and proposed Section 17944 (a)(1) as it provides an exemption to the container requirements due to technological barriers, rather than requiring compliance with another compliance option.

Subsection 17944.2 (a)(3) The current Subsection is deleted. Per PRC Section 42310.1, as of January 1, 1996 this Subsection is obsolete and no longer needs to be included.

Subsection 17944.2 (a)(4) The current Subsection is deleted. The regulations have been reorganized and this Subsection is replaced by waiver requirements in proposed Subsection 17946 (b).

Subsection 17944.2 (b) The current Subsection is deleted. At 2007 meetings, stakeholders said the question and answer format of the regulations was confusing so the question and response format is removed. The information on obtaining a waiver is replaced with that in proposed Section 17946.

Subsection 17944.2 (b)(1) The current Subsection is deleted. The regulations have been reorganized and this Subsection is replaced by waiver requirements in proposed Subsection 17946 (c).

Subsection 17944.2 (b)(2) The current Subsection is deleted. The regulations have been reorganized and this Subsection is replaced by waiver requirements in proposed Section 17946 (e).

Subsection 17944.2 (b)(3) The current Subsection is deleted. Per PRC Section 42310.1, as of January 1, 1996 this Subsection is obsolete and no longer needed.

Subsection 17944.2 (c) The current Subsection is deleted. The regulations have been reorganized and this Subsection is replaced, in part, by waiver requirements in proposed Subsection 17946 (d).

SECTION 17944.5 Exempt Rigid Plastic Packaging Containers.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

This Section is deleted. The regulations have been reorganized and this Section is replaced by exemption requirements in proposed Section 17946.5.

Subsection 17944.5 (a) The current Subsection is moved to proposed Section 17946.5 (a) and amended.

Subsection 17944.5 (a)(1) The current Subsection is moved to proposed Subsection 17946.5 (a)(1) and amended.

Subsection 17944.5 (a)(2) The current Subsection is moved to proposed Subsection 17946.5 (a)(2) and amended.

Subsection 17944.5 (a)(3) The current Subsection is moved to proposed Subsection 17946.5 (a)(3) and amended.

Subsection 17944.5 (a)(4) The current Subsection is moved to proposed Subsection 17946.5 (a)(4) and amended.

Subsection 17944.5 (b) The current Subsection is moved to proposed Subsection 17946.5 (b) and amended.

SECTION 17945 Who Must Comply With These Regulations?

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

This Section and its Subsections are deleted. The regulations are reorganized for greater clarity and ease in finding related information. The information on who is responsible for complying with this Article is now addressed by the definition of “product manufacturer” in proposed

Subsection 17943 (t), details on when and how product manufacturers must certify compliance is in proposed Section 17945.2, Compliance Certifications, and information on exempt containers is in proposed Section 17946.5, Exempt Rigid Plastic Packaging Containers.

Subsection 17945 (a) The current Subsection is deleted to eliminate the question and answer format that stakeholders said was confusing. The Subsection is replaced, in part, by information contained in proposed Subsection 17943 (t) and Section 17945.2.

Subsection 17945 (a)(1) The current Subsection is deleted. Responsibility for compliance is now described in proposed Subsection 17943 (t) and Section 17945.2.

Subsection 17945 (a)(2) The current Subsection is deleted. Information on exemption containers is now contained in proposed Section 17946.5.

SECTION 17945.1 Pre-Certification Process.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The proposed Section is added. In the past, product manufacturers have complained they were unaware of the RPPC law until they were required to certify compliance for a prior year, for which they may not have been keeping records, and then were found to be noncompliant. Also, during the formal rulemaking process, stakeholders raised concerns about having adequate lead time to prepare for a certification cycle under the new regulations and adequate time to respond to certification notices. Addition of a pre-certification process will allow the Department to process certifications more efficiently because product manufacturers will have advance notice of record keeping requirements, be able to ask for advisory opinions, and be eliminated from the certification pool if they do not sell or offer for sale regulated RPPCs.

The proposed pre-certification process will address these issues by providing stakeholders with advance notice that they have been identified as a product manufacturer and may be required to certify compliance in the subsequent year, and specified timeframes for responding with basic contact information. The pre-certification timeline will allow product manufacturers the opportunity to identify and resolve various compliance issues upfront and set up necessary recordkeeping before the certification period. This process will also allow the Department to provide outreach to product manufacturers on an ongoing basis as they are identified as companies potentially regulated by the program. The Department will request the regulations become effective January 1, 2013 the start of the first full calendar year after the approval of the regulations. The first precertification cycle will start in 2013. The first companies required to certify under the revised regulations will be notified in 2014 and the first certifications, under these revised regulations, will be due April 1, 2015. Product manufacturers and other stakeholders have almost two years to ask questions or make changes prior to being asked to prepare certifications with supporting documentation to verify compliance with the law.

Subsection 17945.1 (a) Identification of Companies That May Be Subject to Certification.

The proposed Subsection is added to describe how the Department will notify companies that appear to be subject to this Article about the program and certification process. The Subsection specifies that the Department must notify a newly identified product manufacturer that it appears to be subject to the RPPC requirements, and that the product manufacturer must respond within 90 days with certain information, as outlined in the subsequent subsections. The Departmental

notification process addresses the stakeholder concern about companies not realizing they may need to certify compliance under this program. The timeline for companies to submit contact information helps ensure the Department receives updated information, which in turn will help ensure that subsequent pre-certification and certification notices reach the correct office in a timely manner. From past experience, the Department has learned that companies selling products in RPPCs frequently merge and move so it may take multiple attempts to reach the correct party. This process will help keep contact information more up to date and save time and money.

Subsection 17945.1 (a)(1) This proposed Subsection is added to specify the information a newly identified product manufacturer must provide within 90 days of notification. The Department requires the product manufacturer's designated contact's name and title to help ensure that future Department communications reach the correct party in a timely manner. This helps address stakeholder concerns about inadequate notice of certification requirements and saves the Department time in trying to track down changed company addresses and contact persons.

Subsection 17945.1(a)(2) This proposed Subsection is added to specify information a newly identified product manufacturer must provide within 90 days of notification. The Department also needs the product manufacturer contact's phone number, fax number and e-mail address for future communications. Again, this helps address stakeholder concerns about inadequate notice of certification requirements and saves the Department time in trying to track down changed company addresses and contact persons for future communications.

Subsection 17945.1 (a)(3) This proposed Subsection is added to specify information a newly identified product manufacturer must provide within 90 days of notification. This addition is necessary to provide the Department with the product manufacturer's official company mailing address and web address (if the company has one) for future communications and general information, respectively. This helps address stakeholder concerns about inadequate notice of certification requirements and saves the Department time in trying to track down changed company addresses and contact persons.

Subsection 17945.1 (a)(4) This proposed Subsection is added to specify information a newly identified product manufacturer must provide within 90 days of notification. This addition allows product manufacturers to demonstrate that they are not subject to RPPC requirements (e.g., only have exempt containers, no longer sell in California) so the Department can review this and eliminate them from the list of regulated companies, if applicable, prior to their potentially being selected for inclusion in a certification cycle. This helps address stakeholder concerns about being required to certify when they were not subject to RPPC requirements. Identifying product manufacturers that are not (or no longer) selling products contained in RPPC's in California before the pre-certification process will be more efficient for both product manufacturers and Department staff than determining this during a certification cycle (as has been the case historically). It will help ensure that the product manufacturers selected for certification are those currently using RPPCs, and thus reduce Department resources needed to process certifications that result in a finding that the product manufacturer is not subject to program requirements.

Subsection 17945.1 (b) Pre-Certification Notice. This proposed Subsection is added to describe the pre-certification notice process. In the past, product manufacturers have complained they were unaware of the RPPC law until they were required to certify compliance

for a prior year, for which they may not have been keeping records, and then were found to be noncompliant. . During the rulemaking process, stakeholders raised concerns about having adequate lead time to prepare for a certification cycle under the new regulations and adequate time to respond to certification notices. The proposed Subsection addresses the concerns described above.

Subsection 17945.1 (b)(1) This proposed Subsection is added to specify that the Department select from the group of known product manufacturers subject to this Article, a subgroup that may be required to certify compliance during the subsequent year. The Subsection establishes a deadline for the Department to send the pre-certification notice, in writing, of January 31 of the calendar year prior to the start of the measurement period for which the product manufacturer may be selected to certify compliance. This gives product manufacturers advance notice so they can review their containers for compliance and have a recordkeeping system in place before the measurement period begins in case they are subsequently selected to submit a certification per Subsection 17945.1 (c). January 31 was selected to avoid mailings during the December holidays while still providing almost a full year's notice before the certification period begins and over two years notice before a certification would be due. This addresses stakeholder concerns about having adequate lead time to prepare for a certification cycle.

Subsection 17945.1 (b)(2) This subsection is added to allow a product manufacturer to seek an advisory opinion (pursuant to the process outlined in proposed Section 17948.2) as to whether it is subject to the Article, and requires companies submit such requests within 90 days of receiving a pre-certification notice. This addresses the product manufacturers' concern that they be able to identify whether they are actually subject to the certification process (or not) in advance of being requested to prepare a certification. The time limit of 90 calendar days is provided to ensure the Department receives such requests and can make its determinations before the given certification period, and to address stakeholder concerns about adequate time to prepare for a certification cycle. Staff considered expanding the opportunity to request advisory opinions beyond the certification pool, however based on the number of opinions that have historically been requested, the time required to prepare such opinions and the scope of the potential regulated community, it was necessary to limit the opinions to those product manufacturers who were most likely to be asked to certify.

Subsection 17945.1 (b)(3) This Subsection is added to specify contact information a product manufacturer must provide within 90 days of receiving a pre-certification notice. This is necessary to help ensure the Department has accurate contact information for future communications, since, depending on when the company was first identified as subject to the program, the contact information may not have been updated in several years. This will reduce the volume of returned mail and the problem of product manufacturers not receiving timely notices. The time limit of 90 calendar days was selected for consistency with many of the processes in this program and to ensure the Department receives updated information before it begins preparing for the certification selection and notice process per Subsections 17945.1 (c) and (d).

Subsection 17945.1 (c) Selection of Companies to Certify Compliance. This proposed Subsection is added to provide the hierarchy that may be used by the Department to select product manufacturers to certify in any given cycle. The proposed Subsection addresses concerns raised by stakeholders regarding the process the Department will use to select product manufacturers to include within a certification cycle. This addition provides

stakeholders information on the likelihood they will be required to certify from among the entire pool of known regulated product manufacturers.

Subsection 17945.1 (c)(1) This Subsection is added to identify the first priority for selecting product manufacturers to include within a certification cycle. The first priority is a selection of product manufacturers determined to be out of compliance with the requirements of the Article in a prior certification cycle and not yet been found in compliance. Some product manufacturers commented that it was unfair to select a company that had been found to be out of compliance to certify over multiple certification cycles. This Subsection clarifies that product manufacturers found out of compliance in past certification cycles may be first priority for selection in future cycles but not necessarily. It may also encourage non-compliant companies to more quickly come into compliance with the law and demonstrate that to the Department. Compliance history is routinely considered in selecting members of a regulated community to demonstrate compliance with a wide variety of laws. Companies with a history of compliance problems may be sampled at higher rates. This is intended to encourage immediate compliance by all rather than a company taking corrective actions only when caught violating. This provides an additional incentive for companies to comply. Not including companies with past compliance problems in the pool of companies that could be selected to certify compliance would encourage companies to violate the RPPC law, pay one penalty and be guaranteed they will not have to comply or pay penalties in subsequent years.

Subsection 17945.1 (c)(2) This Subsection is added to identify the second priority for selecting product manufacturers to include within a certification cycle. Second priority is based on a random selection of product manufacturers that have not yet been selected to certify compliance with the Article. The random selection feature addresses concerns of product manufacturers that certain companies or industries seemed to be selected for certification more frequently than others.

Subsection 17945.1 (c)(3) This Subsection is added to identify the third priority for selecting product manufacturers to include within a certification cycle. Third priority for selection is based on a random selection of product manufacturers that have previously been found to be in compliance with the Article. It clarifies that product manufacturers that were previously selected for a certification cycle and found to be in compliance are the lowest priority for inclusion in a certification cycle but may still be selected periodically. The random selection feature addresses concerns of product manufacturers that certain companies or industries seemed to be selected for certification more frequently than others.

Subsection 17945.1 (d) Certification Notice. This proposed Subsection is added to explain how the Department will notify product manufacturers that they will be required to certify compliance for the specified measurement period. This helps address stakeholder concerns about adequate notice before they are required to certify compliance. The Department will determine the proportion of companies for each portion of the selection hierarchy: previously selected and not yet found in compliance (Subsection 17945 (c)(1)); never selected to certify compliance (Subsection 17945 (c)(2)); and previously selected and found in compliance (Subsection 17945 (c)(3)). The companies in the never selected and previously selected and found in compliance will be randomly selected for the certification.

Subsection 17945.1 (d)(1) This Subsection is added to describe how the Department will select the group of product manufacturers required to certify compliance for a given measurement period. Specifically, the Department will select a subgroup of those notified in the prior year's

pre-certification notice. This ensures that those selected to certify will have already received advance notice that they might be selected to certify compliance. This addresses product manufacturers' concerns that they receive adequate notice prior to a certification being required.

Subsection 17945.1 (d)(2) This Subsection is added to specify a deadline of March 31 of the measurement period for the Department to notify product manufacturers selected to certify compliance. This addresses concerns stakeholders raised regarding the lack of adequate notice provided to product manufacturers under the current regulations. March 31 was selected to ensure the notice is sent early in the year while avoiding mailing during the December holidays and during the pre-certification notice period (which will be happening simultaneously in any given certification period for the subsequent certification period) required in Subsection 17945.1 (b). It provides product manufacturers with at least a full year's notice before the compliance certification is due pursuant to Section 17945.2.

Subsection 17945.1 (d)(3) This Subsection is added to provide another opportunity for a product manufacturer to seek an advisory opinion. Specifically, it allows product manufacturers 90 calendar days from receipt of a certification notice to request an advisory opinion (pursuant to the process outlined in proposed Section 17948.2) as to whether any new containers it has introduced since it had the opportunity to request such an opinion during the pre-certification process are subject to this Article (or not). This addresses the product manufacturers' concern that they be able to identify whether their containers are actually subject to the certification process in advance of compiling the information for a certification. The time limit of 90 calendar days is provided to ensure the Department receives such requests and can make its determinations during the measurement period (and well before certifications are due), and thus address stakeholder concerns about having adequate lead time to prepare a certification.

SECTION 17945.2 Compliance Certifications.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The proposed Section is moved from current Section 17946 and amended. Per the description on page 2 of this document, the reason for deleting portions of current Section 17946 is explained under proposed Section 17946.

The question in the title "Who Must Certify That Compliance With This Article Is Met?" is deleted and replaced with the proposed title "Compliance Certifications." At 2007 meetings, stakeholders said the question and answer format of the regulations was confusing so the proposed Section deletes the current question and answer format and clarifies and consolidates compliance time frames and information submittal requirements for both product and container manufacturers. To improve ease in using the regulations, all requirements for notifying product manufacturers of upcoming certifications are now found in Section 17945.1, and specific information to be submitted in either a product or container manufacturer's certification is now found in Sections 17945.3 and Section 17945.4, respectively.

Subsection 17945.2 (a) The proposed Subsection is moved from current Subsection 17946(a) and amended. The question and answer format is deleted for clarity as requested by stakeholders. Following the words "Product manufacturers" the words "pursuant to Section 17943(b)(12) of this Article, and only" have been deleted as redundant since the term product manufacturer is now defined in Section 17943 (t) and applies throughout the Article. The word

“written” is added before “notification” and the term “Board” replaced by “Department” (which succeeded the Board January 1, 2010) to clearly describe how the Department will provide notice. The phrase “as described in this section” is deleted since the certification notice process is moved to proposed Section 17945.1. For clarity as to what containers are regulated, the words “all of”, “rigid plastic packaging” and “holding their products sold or offered for sale in California” are added, and the phrases “that they use” and “if they sell or offer for sale a product in a rigid plastic packaging container that is sold to a final end user in California” are deleted. Also added is the appropriate reference to PRC Section 42310 or 42310.3 since the current regulations are not clear that certifications are limited to containers that must comply with these statutory sections.

The sentence beginning “Product manufacturers shall submit ...” is added to clearly specify where the content requirements for product manufacturer certifications are now located. The subsequent two sentences are now deleted as information on product manufacturer certifications is now in proposed Section 17945.3, not in this section, and container manufacturer certification requirements are included in proposed Section 17945.4, not in Sections 17944 and 17946.5. The final sentence, regarding container manufacturer certifications, is moved to proposed Subsection 17945.2 (b) and amended.

Subsection 17945.2 (b) The proposed Subsection (b) is moved from current Subsection 17946 (a) and amended. For grammatical clarity, the Subsection is rephrased, and the term “must” replaced with the term “shall” consistent with the definition in Subsection 17943 (l). Reference to Section 17945.4 is added as that is where information on container manufacturer certification is now described. The phrase “(h) below, if the container manufacturer produces rigid plastic packaging containers that either” is deleted as the subsequent current subsections (current Subsections 17946 (a)(1) and (a)(2)) are deleted.

Subsection 17945.2 (c) The proposed Subsection (c) is moved from the first part of current Subsection 17946 (e) and amended. The question “How long do I have to respond to a Board request for a completed certification forms?” is deleted because stakeholders said the current question and answer format is confusing. In the first sentence, the phrase “including any applicable container manufacturer certifications” is added to clarify that product manufacturer certifications require inclusion of container manufacturer certifications (per proposed Subsection 17945.3 (c)(7)). This enables the Department to more quickly review product manufacturer certifications for accuracy and consistency. The word “forms” is deleted since the Department is no longer mandating the use of certification forms. The phrase “or sent electronically” is added to provide the Department the option of providing written notice other than by standard mail. The phrase “April 1 of the calendar year immediately following the measurement period” is added and replaces “90 calendar days from the date on which the Board’s request arrived via certified mail.” This gives a single due date for all product manufacturer certifications, rather than the variable date allowed per the current wording which is difficult to monitor as certified mailing receipts are not always promptly returned to the Department. Removing the reference to certified mail also allows the Department to use other (and often simpler, more timely) means for notifying its product manufacturers in writing.

Subsection 17945.2 (d) The proposed Subsection (d) is moved from the second paragraph of current Subsection 17946 (e) and amended. The proposed Subsection clarifies how and when a product manufacturer may request a time extension for submitting its certification; the Subsection is also reorganized for clarity and consistency. In the first sentence, the phrase “Product manufacturers, may” is replaced by “a product manufacturer may” as part of the

sentence restructuring, and “in writing” is deleted to allow the Department to accept requests in other forms, such as by e-mail, instead of standard written mail. The phrase “due date” is replaced with “end of the measurement period” so that extensions will be submitted and can be approved or denied before the certification is due. The phrase “for submittal of its certification” is added to clarify and limit the purpose of this particular extension request to the certification filing at hand. The words “an additional” are deleted and the words “for cause” are added to clarify that time extensions are not automatic or repeatedly allowed, but require justification from the product manufacturer. The word “calendar” is added before days to clarify the time period and as used consistently throughout the regulations. The phrase “to respond to the Board’s request for certification” is deleted as unnecessary given the proposed clarification that such extension requests are due prior to the end of the measurement period.

In the second sentence the term “Board” is replaced by “Department,” “Board’s” by “Department’s” and the phrase “the Board with” deleted as the Department succeeded the Board as of January 1, 2010. The word “only” is added and the phrase “support its request” replaced by “justify an extension” to clarify that the Department will not grant a time extension without a justification and to use terms consistently. These clarifying changes increase the likelihood that extension requests will be filed in a timely manner and with necessary supporting documentation, thus allowing the Department to process them more quickly.

Subsection 17945.2 (e) The proposed Subsection (e) is moved from current Subsection 17946 (f) and amended. The question is deleted to remove the confusing question and answer format as requested by stakeholders. The first sentence of the current response is deleted to simplify the wording of this Subsection and because the Department is no longer mandating the use of certification forms.

The term “Board” is replaced by “Department” since the Department succeeded the Board January 1, 2010. The word “If” and the phrase “receives a certification that, upon review, does not include all of the information required by this Article, the Department” are added to clarify that the certification must contain all the information required by the Article, and if it does not, the Department will notify the product manufacturer. The phrases “then, via certified mail,” and “as to the completeness of the forms. The Board’s notice will” are deleted as the Department may use other mailing options (including e-mail) and forms are no longer mandated. For grammatical clarity, the word “and” is added and “whether any” replaced with “what.” The words “then” and “calendar” are added to clarify that in this process the manufacturer will have 30 calendar days after receiving the notice to provide the required information, and to consistently use “calendar days” throughout the regulations. The word “the” before “receipt” is deleted to correct the grammar. The sentence “One 30-calendar day extension may be granted for cause by the Department upon request.” is added as stakeholders asked that there be an extension available if there was good cause, and one such extension to the response time will not unreasonably delay the overall certification process.

Subsection 17945.2 (f) The proposed Subsection is added to clarify that the Department may request information from a product manufacturer outside of any notice of incomplete certification and outside of a certification cycle. This is necessary as even a complete certification may raise questions which require the Department to request supporting documentation to complete its compliance determination review, and outside of a certification cycle the Department may have a need to check for additional information to review the compliance status of a company. Since the request will not relate to quickly completing an incomplete certification, a longer 60-calendar day time frame for response is included.

SECTION 17945.3 Product Manufacturer Certification Information.**SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION**

The proposed Section is added. It replaces, in part, information contained in current Subsection 17946 (i) and portions of other sections including Subsections 17946 (g) and 17946.5. Per the description on page 2 of this document, the reason for deleting portions of current Section 17946 is explained under proposed Section 17946.

Product manufacturers stated determining all the certification requirements with information spread throughout the regulations was very confusing. This Section consolidates the product manufacturer certification requirements, and Section 17945.5 consolidates the formulas for product manufacturers to use to determine their compliance.

Subsection 17945.3 (a) This Subsection is moved from 17946 (i) and amended. The question “I am a product manufacturer, what type of information must I provide in my certification” is deleted to eliminate the confusing question and answer format. The answer “The information submitted on a Department supplied product manufacturer certification form shall include, but not be limited to, the following:” is replaced by “When notified by the Department to certify compliance, a product manufacturer shall include in its certification the information listed in subsections (b) through (d), and if applicable, (e), of this Section.” This is done for clarity in describing where the information is now listed and to eliminate the obsolete reference to forms as the Department is no longer mandating their use. The formatting changes are consistent with the formatting used throughout the proposed regulations.

Subsection 17945.3 (b) This proposed Subsection and title is added to consolidate and clarify the general information a product manufacturer must include within its certification.

Subsection 17945.3 (b)(1) The proposed Subsection is moved from current Subsection 17946 (i)(1) and amended. The Subsection specifies the basic company contact information to be provided with a certification. With the deletion of the question and answer format, the words “your company’s” were deleted and replaced with “The product manufacturer’s” to clarify whose information to provide. Web address and e-mail address are also added since those are now commonly used by the Department to check if a company’s still active and to maintain contact with the company. “Telephone number” was made plural to remind companies to list multiple numbers to help ensure the Department can reach the contact person.

Subsection 17945.3 (b)(2) The proposed Subsection is added to clarify that a product manufacturer must include a statement as to whether it sold or offered for sale any products in RPPCs in California, and whether any of the products were approved for a waiver (pursuant to Section 17946) or any of the containers qualified for an exemption (pursuant to Section 17946.5). This will assist the product manufacturers in preparing, and the Department in reviewing, certifications that account for all the regulated products and their containers.

Subsection 17945.3 (b)(3) The proposed Subsection (b)(3) is moved from Subsection 17946 (i)(5) and amended. The proposed Subsection includes the requirement that each product manufacturer’s certification be signed under penalty of perjury and specifies the form of the certification and signature consistent with other certifications in these regulations and in other Departmental programs such as the At Store Recycling Program, and local government reports.

Specifically, the amendments replace the term “submitted” with “signed” for clarity and consistency, and add the language as to who in the company is authorized to sign the certification and the format to use. This will reduce the number of certifications found incomplete or inaccurate due to an unauthorized signature. The phrase “to the best of my knowledge and belief” is added to the statement pursuant to stakeholder comments that the certifier really can’t certify to information beyond the scope of his or her knowledge and belief. Finally, the phrase “information and all supporting data provided is accurate, true and complete” is added to further clarify what the signatory is certifying as being complete fully meets the requirements of this Article.

Subsection 17945.3 (c) The proposed Subsection is added to consolidate in a single location the container information needed by the Department to review whether or not the product manufacturer is in compliance. This addresses product manufacturers’ concerns that it is difficult to determine all the sections with which a certification had to comply when they are scattered throughout the existing regulations (e.g., in current Sections 17946 and 17946.5). It also will make it easier for the Department to review submitted certifications to the extent that companies follow the format of the regulations to list the required information. The container information required throughout Subsection 17945.3 (c) is needed in conjunction with the additional information by compliance option in Subsection 17945.3 (d) in order for product manufacturers to calculate their compliance rates using the formulas in Section 17945.5 and for the Department to complete its review of the certifications.

The introductory statement “For each container line (whether or not it was included in the prior certification cycle):” is added here for clarity as to what the following subsections relate to, and to address stakeholder concerns raised during the rulemaking process that a product manufacturer might otherwise omit from its certification containers previously reported and found in compliance (inappropriately claiming a “lifetime exemption” from further reporting). For any given certification period, the certification is to include all the regulated containers so the Department can assess the product manufacturer’s overall compliance for the given period. For example, while a container may have been source reduced in an earlier year, the product manufacturer still must document that action to claim source reduction compliance for the container.

Subsection 17945.3 (c)(1) This proposed Subsection is added to require that the certification include a description of the type of each RPPC (i.e., jar, bottle, clamshell, etc.). This is part of the information needed to visually identify the containers which will be required to comply with the RPPC requirements.

Subsection 17945.3 (c)(2) This proposed Subsection is added to require the associated product(s) or advertised brand name(s) of each RPPC. It replaces, in part, information contained in current Subsection 17946 (i)(2). Information on the brand name or product line for each container is needed to facilitate the Department’s determination of whether the container is required to comply with the RPPC requirements or whether it is exempt.

Subsection 17945.3 (c)(3) This proposed Subsection is added to require that a certification contain the volume or capacity of each RPPC. This information is needed to help determine if the container is required to comply with the RPPC requirements as capacity is part of what defines an “RPPC” for purposes of this program.

Subsection 17945.3 (c)(3)(A) This proposed Subsection is added to clearly specify that the capacity or size reported on the certification be expressed in the same unit of volume that is used on the container label. Staff needs this information to determine whether the container meets the definition of a RPPC. It is necessary to provide information in the same unit to avoid inconsistencies in how container volumes are determined.

Subsection 17945.3 (c)(3)(B) This proposed Subsection is added. It requires that containers for products sold based on weight or numeric count be reported on an equivalent volume basis. Staff needs this information to determine whether the container meets the definition of a RPPC as staff cannot make that determination based on product weight or product count.

Subsection 17945.3 (c)(4) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5. The Subsection requires the weight, in grams, of each individual RPPC type. This requirement is necessary in order to have a uniform unit of measurement for compliance calculations using the formulas in proposed Section 17945.5. As the weight is needed for all regulated containers, the item is included in this Subsection on Container Information rather than repeated for each compliance option.

Subsection 17945.3 (c)(5) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946 (i)(2). The Department needs this information to determine container compliance with specified options including, but not limited to, the 45% recycling rate option in proposed Subsection 17944 (a)(2).

Subsection 17945.3 (c)(6) This proposed Subsection is added. It requires the number of RPPCs sold during the measurement period. This data is needed for compliance calculations contained in proposed Subsection 17945.5. If a product manufacturer does not comply, the Department needs this information to calculate penalties which are weighted based, in part, on the total numbers of RPPCs sold into California.

Subsection 17945.3 (c)(6)(A) This proposed Subsection is added. It requires direct sales by the product manufacturer. This information is necessary to ensure containers sold directly to consumers, which are a portion of total containers, are included in the overall count. This data is needed for compliance calculations contained in proposed Subsection 17945.5. If a product manufacturer does not comply, the Department needs this information to calculate penalties which are weighted based, in part, on the total numbers of RPPCs sold into California.

Subsection 17945.3 (c)(6)(B) This proposed Subsection is added. It requires sales through distributors, franchises, dealers, and agents. This information is necessary to ensure containers sold by distributors, franchises, dealers, and agents, which are a portion of total containers, are included in the overall count. This data is needed for compliance calculations contained in proposed Subsection 17945.5. If a product manufacturer does not comply, the Department needs this information to calculate penalties which are weighted based, in part, on the total numbers of RPPCs sold into California.

Subsection 17945.3 (c)(6)(C) This proposed Subsection is added. It requires all mail-order and Internet sales be included in the certification. This information is necessary to ensure containers sold via mail-order and Internet sales, which are a portion of total containers and which have increased dramatically since the original RPPC regulations were adopted in 1995, are included in the overall count. This data is needed for compliance calculations contained in proposed Subsection 17945.5. If a product manufacturer does not comply, the Department

needs this information to calculate penalties which are weighted based, in part, on the total numbers of RPPCs sold into California.

Subsection 17945.3 (c)(6)(D) This proposed Subsection is added. It requires the product manufacturer to identify if the data submitted is specific to sales in California, or national sales. This information is necessary because statute allows the product manufacturer to submit information based on California sales or national sales (PRC Section 42310). Additionally, to specifically track progress in the reuse of recycled plastic within California, the Department needs to know if the information provided by the product manufacturer is based on national figures or California figures.

Subsection 17945.3 (c)(7) This proposed Subsection is added. It specifies that the product manufacturer is responsible for identifying the container manufacturer(s) and ensuring that its report is consistent with any container manufacturer certification(s) obtained. This requirement is necessary to ensure that the product manufacturer, which is responsible for the certification, submits information consistent with the container manufacturers' information it received. If the information is not consistent, the Department will not be able to determine that the product manufacturer is in compliance with the RPPC requirements.

Subsection 17945.3 (d) This proposed Subsection is added. For clarity, it consolidates and replaces, in part, information contained in current Subsections 17946 (g) and Section 17946.5. Product manufacturers expressed concerns that the current regulations are difficult to follow because information they need to supply for each compliance option is scattered throughout the regulations. This proposed subsection consolidates the specific additional information that a product manufacturer must provide by compliance option. For example, it includes information required to be submitted for each of the four source reduction options separately, since different information is necessary to evaluate compliance with each type of source reduction. An introductory statement is added to clearly indicate what is to be submitted per the subsequent subsections, and that this information is in addition to (not redundant to) the information the product manufacturer has already provided per Subsection 17945.3 (c).

Subsection 17945.3 (d)(1) This section is added. It replaces, in part, information contained in current Subsections 17946 (h), 17946 (i)(3)(A), and 17946.5 (a)(1). Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the postconsumer material compliance option because the information is scattered throughout the regulations. This proposed Subsection consolidates the additional information that a product manufacturer must provide for the Department to evaluate compliance under the postconsumer material compliance option. An introductory statement is added to clearly explain when to provide (i.e., when claiming the postconsumer material compliance option) the information specified in the subsequent subsections.

Subsection 17945.3 (d)(1)(A) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(1)(A). It requires the weight in grams, of postconsumer material in the RPPC(s) for which compliance is claimed under this option. The information is necessary in order to evaluate compliance with the postconsumer compliance option and is used in the postconsumer compliance formulas in proposed Subsection 17945.5 (b).

Subsection 17945.3 (d)(1)(B) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946(h)(3). It requires the percentage of

postconsumer material in the RPPC(s) as calculated by the product manufacturer using the formulas in proposed Subsection 17945.5 (b). This information is required to evaluate compliance with the postconsumer content option.

Subsection 17945.3 (d)(2) This proposed Subsection is added. Per PRC Section 42301 (j)(1), a product manufacturer may claim source reduction by either reducing the weight of the container or concentrating the product or a combination of both, or by comparing the packaging used for similar products whose containers have not been considered sourced reduced. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under the source reduction option based on reduced container weight. Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the source reduction compliance option because the information is scattered throughout the regulations. An introductory statement is added to clearly explain when to provide (i.e., when claiming this compliance option) the information specified in the subsequent subsections.

Subsection 17945.3 (d)(2)(A) This proposed Subsection is added. It replaces, in part information contained in current Subsection 17946.5 (a)(2)(B). It requires the weight, in grams, of the RPPC used for a product prior to source reduction. This weight is necessary to calculate whether a container complies with this option using the formulas in proposed Section 17945.5 (d)(1). A uniform unit of measurement of each container before and after source reduction is needed so the calculations will be mathematically correct. Based on past certification cycles, grams were the weight unit provided most frequently for an individual container weight so grams is used consistently throughout the proposed regulations.

Subsection 17945.3 (d)(2)(B) This proposed Subsection replaces the information contained in current Subsection 17946.5 (a)(2)(A). The terminology (e.g., “rigid plastic packaging container”) is made consistent. Source reduction is defined as a 10 percent reduction in container weight in PRC 42301 (j), so the source reduction percentage for each product is needed for the Department to evaluate compliance with the source reduction through the reduced container weight compliance option.

Subsection 17945.3 (d)(2)(C) This proposed Subsection is added. It is necessary to know the date of the source reduction claimed on the certification at hand so the Department can, determine whether the source reduction meets the PRC requirement of being compared to the package used for the product by the product manufacturer on January 1, 1995, or the packaging used for that product by the product manufacturer over the course of the first full year of commerce in California (PRC Section 42301 (j)(1)(B)(i-ii)).

Subsection 17945.3 (d)(3) This proposed Subsection is added. It replaces, in part, information contained in current Subsections 17946 (a)(2) and (i)(1)(E) and 17946.5 (a)(2). Per PRC Section 42301 (j)(1), a product manufacturer may claim source reduction by either reducing the weight of the container or concentrating the product or a combination of both, or by comparing the packaging used for similar products whose containers have not been considered source reduced. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under the source reduction option based on product concentration. Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the source reduction compliance option because the information is scattered throughout the regulations. An introductory statement is

added to clearly explain when to provide the information specified in the subsequent subsections (i.e., when claiming this compliance option).

Subsection 17945.3 (d)(3)(A) This proposed Subsection is added. It requires the number of product uses per unit before and after the product concentration, and the methodology used to calculate this change. This information is needed by the product manufacturer to calculate whether a container complies with this option using the formulas in proposed Subsection 17945.5 (d)(2), and by the Department to verify the compliance determination. The language was modified from the first drafts to eliminate wording about “describing how a product was concentrated.” The Department does not need specific product formulations to assess compliance under this option, and stakeholders had raised concerns during the second 45-day comment period that such language would unnecessarily require them to divulge trade secrets.

Subsection 17945.3 (d)(3)(B) This proposed Subsection is added. It requires the percentage of source reduction as calculated by the product manufacturer using the formula in proposed Subsection 17945.5 (d)(2). This information is required to evaluate compliance with the source reduction by product concentration option.

Subsection 17945.3 (d)(3)(C) This proposed Subsection is added. It is necessary to know the date of the source reduction claimed on the certification at hand so the Department can, determine whether the source reduction meets the PRC requirement of being compared to the package used for the product by the product manufacturer on January 1, 1995, or the packaging used for that product by the product manufacturer over the course of the first full year of commerce in California (PRC Section 42301 (j)(1)(B)(i-ii)).

Subsection 17945.3 (d)(4) This proposed Subsection is added. It replaces, in part, information contained in current Subsections 17946 (a)(2) and (i)(1)(E) and 17946.5 (a)(2). Per PRC Section 42301 (j)(1), a product manufacturer may claim source reduction by either reducing the weight of the container or concentrating the product or a combination of both, or by comparing the packaging used for similar products whose containers have not been considered sourced reduced. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under the source reduction option based on product concentration and reduced container weight. Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the source reduction compliance option because the information is scattered throughout the regulations. An introductory statement is added to clearly explain when to provide (i.e., when claiming this compliance option) the information specified in the subsequent subsections.

Subsection 17945.3 (d)(4)(A) This proposed Subsection is added. It replaces, in part information contained in current Subsection 17946.5 (a)(2)(B). It requires the weight in grams, of the RPPC used for a product prior to source reduction. This weight is necessary to calculate whether a container complies with this option. A uniform unit of measurement of each container for the product before and after source reduction is needed so the calculations will be mathematically correct. Based on past certification cycles, grams were the weight unit provided most frequently for an individual container weight so are used consistently throughout the proposed regulations.

Subsection 17945.3 (d)(4)(B) This proposed Subsection is added. It requires the number of product uses per unit before and after the product concentration, and the methodology used to calculate this change. This information is needed by the product manufacturer to calculate

whether a container complies with this option using the formula in proposed Subsection 17945.5 (d)(3), and by the Department to verify the compliance determination. The language was modified from the first drafts to eliminate wording about “describing how a product was concentrated.” The Department does not need specific product formulations to assess compliance under this option, and stakeholders had raised concerns during the second 45-day comment period that such language would unnecessarily require them to divulge trade secrets.

Section 17945.3 (d)(4)(C) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(2)(B). It requires the weight, in grams, per unit of product before and after source reduction. This allows determination of whether a container complies with this option using consistent units throughout the calculations.

Subsection 17945.3 (d)(4)(D) This proposed Subsection is added. It requires the percentage of source reduction as calculated by the product manufacturer using the formula in proposed Subsection 17945.5 (d)(3). This information is required to evaluate compliance with the source reduction by product concentration and weight reduction option.

Subsection 17945.3 (d)(4)(E) This proposed Subsection is added. It is necessary to know the date of the source reduction claimed on the certification at hand so the Department can, determine whether the source reduction meets the PRC requirement of being compared to the package used for the product by the product manufacturer on January 1, 1995, or the packaging used for that product by the product manufacturer over the course of the first full year of commerce in California (PRC Section 42301 (j)(1)(B)(i-ii)).

Subsection 17945.3 (d)(5) This proposed Subsection is added. It identifies all of the information that must be included if claiming compliance by source reduction through a comparison with similar products, as this information is not clearly provided in the current regulations and is necessary for the Department to review the certification. Per PRC Section 42301 (j)(1), a product manufacturer may claim source reduction by either reducing the weight of the container or concentrating the product or a combination of both, or by comparing the packaging used for similar products whose containers have not been considered sourced reduced. Staff has determined a product manufacturer can utilize this comparison, based on PRC Section 42301, Subdivision (j)(1)(B)(iii), if they cannot utilize PRC Section 42301, Subsection (j)(1)(B)(i) and (ii), because they did not previously utilize a rigid plastic packaging container (RPPC) for that product prior to January 1, 1995, and they have not sold their product in a RPPC in California. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under the source reduction option based on comparison to similar products. Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the source reduction compliance option because the information is scattered throughout the regulations. An introductory statement is added to clearly explain when to provide (i.e., when claiming this compliance option) the information specified in the subsequent subsections.

Subsection 17945.3 (d)(5)(A) This proposed Subsection is added. It requires the advertised brand name(s) of the similar products, and also the primary product manufacturer(s), distributor(s), or importer(s) listed on the labels of the similar containers. This information is necessary to evaluate compliance with this option, which requires the comparison of the weight of the product manufacturer’s RPPC to other similar RPPCs containing the same type of product. The Department must have information on the product to determine whether the

similar container contains a similar product. This information was not previously outlined in regulation and is consistent with PRC Section 42301 (j)(1)(B)(iii).

Subsection 17945.3 (d)(5)(B) This proposed Subsection is added. It requires the weight, in grams, and the volume of the similar container in order to compare them. Weight is necessary to calculate whether a container complies with this option; volume is needed to assess the similarity of the containers. A uniform unit of measurement of each container for the product before and after source reduction is needed so calculations will be consistent and mathematically correct. Based on past certification cycles, grams were the weight unit provided most frequently. This information was not previously clarified in regulation and is consistent with PRC Section 42301 (j)(1)(B)(iii).

Subsection 17945.3 (d)(5)(C) This proposed Subsection is added. It replaces, in part, information in current Subsections 17946 (i)(3)(E)(4) and 17946.5 (a)(7). It adds specific language allowing the Department to request physical samples or photographs of the similar containers and their labels to verify compliance under this option.

Subsection 17945.3 (d)(6) This proposed Subsection is added. It identifies all of the information that must be included if claiming compliance using the reusable RPPC option. It replaces, in part, information contained in current Subsections 17946 (i)(3)(C) and 17946.5 (a)(3).

Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the reusable RPPC compliance option because the information is scattered throughout the regulations. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under the reusable RPPC option. For clarity, product manufacturers are reminded that this compliance option is to be used for original RPPCs only; replacement products that are packaged in RPPCs must comply under another compliance option (e.g., postconsumer material or source reduction).

Subsection 17945.3 (d)(6)(A) This proposed Subsection is added. It requires the number of original RPPCs and of replacement packages sold during the measurement period. This information is needed to calculate compliance for reusable containers per the applicable formula in Subsection 17945.5 (e).

Subsection 17945.3 (d)(6)(B) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(3)(B)(1) and (2). It requires the volume of each original RPPC and of each replacement package. This information is needed to determine if the container(s) meet the definition of an RPPC and to calculate compliance per the applicable formula in Subsection 17945.5 (e).

Subsection 17945.3 (d)(6)(C) This proposed Subsection is added. It replaces, in part, current Subsection 17946 (i)(3)(C). It requires the average number of times the RPPC was reused in the measurement period using the applicable formula in proposed Section 17945.5 (e). The Department needs this information to determine whether a container meets the statutory requirement of being reused by consumers at least five times to store more of the same product in the same container (PRC Section 42301 (d)).

Subsection 17945.3 (d)(6)(D) This proposed Subsection is added. It replaces current Subsection 17946.5 (a)(3)(A). It requires a description of the 12-month period used to identify the number of times the RPPC was reused, if the period is different than the calendar year certification period, and a description of how and why that period was used. The Department recognizes that companies may have other measurement periods than calendar years for tracking their business activities, so will allow for an period other than a calendar year for product manufacturers determining compliance under the reuse option.

Subsection 17945.3 (d)(7) This proposed Subsection is added. It replaces, in part, information contained in current Subsections 17946 (i)(3)(D) and 17946.5 (a)(4). It clarifies what additional information product manufacturers must provide to support a compliance claim through the refilling of the container. Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the refillable RPPC compliance option because the information is scattered throughout the regulations. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under the refillable RPPC option (PRC Section 42310).

Subsection 17945.3 (d)(7)(A) This proposed Subsection is added. It requires the number of refills of RPPCs by the product manufacturer during the measurement period. This information is needed for the product manufacturer to complete, and the Department to verify, the compliance calculation made per Subsection 17945.5 (f) and determine whether the container meets the statutory requirement of being refilled by the product manufacturer at least five times with the original product (PRC Section 42301 (c)).

Subsection 17945.3 (d)(7)(B) This proposed Subsection is added. It replaces information contained in current Subsection 17946 (i)(3)(D). It requires the average number of times the RPPC was refilled in the measurement period using the formula in proposed Section 17945.5 (f). The Department needs this information to determine whether a container complies under this option.

Subsection 17945.3 (d)(7)(C) This proposed Subsection is added. It replaces, in part current Subsection 17946.5 (a)(4)(A). It requires a description of the 12-month period used to identify the number of times the RPPC was refilled, if the period is different than the calendar year certification period, and a description of how and why that period was used. The Department recognizes that companies may have other measurement periods than calendar years for tracking their business activities, so will allow for an period other than a calendar year for product manufacturers determining compliance under the refill option.

Subsection 17945.3 (d)(8) This proposed Subsection, is added. It replaces information contained in current Subsections 17946 (i)(3)(B) and 17946.5 (a)(5). It clarifies what information product manufacturers must provide to support a recycling compliance claim through the particular type RPPC (one which holds a single type of generic product, such as detergent), product associated RPPC (a brand-specific rigid plastic packaging line that holds a brand-specific product such as automotive oil), or single resin type RPPC (a RPPC made of only one resin type, such as PETE, HDPE etc.) recycling compliance option.

Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the recycling rate compliance option because the information is scattered throughout the regulations. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to review its recycling rate methodology

and to evaluate compliance under this option. The term “resin specific” is used throughout this Subsection consistent with PRC Subsection 42310(b). The introductory statement clearly specifies what is to be submitted per the subsequent subsections.

Subsection 17945.3 (d)(8)(A) This proposed Subsection is added. It replaces information in current Subsections 17946.5 (a)(5)(A), (B) and (C). Since the recycling rate may be calculated using several methods, this section clarifies that the Department must approve the recycling rate methodology before it is used by a product manufacturer to certify compliance using this option. This proposed Subsection will ensure that necessary information is received by the Department to evaluate a methodology, and also to ensure that that information is received in a timely manner.

Subsection 17945.3 (d)(8)(A)(1) This proposed Subsection is added. It replaces, in part, current Subsection 17946.5 (a)(5)(A). It requires the product manufacturer to submit the proposed methodology used to determine its recycling rate within 90 calendar days of receiving notice that it will be required to submit a certification pursuant to Section 17945.1 (d). This allows time for the Department to review and approve the methodology during the certification period so the product manufacturer will be able to determine compliance prior to the certification due date. In the past, it has taken considerable time to obtain approval of the recycling method so establishing a reasonable timeframe is necessary.

Subsection 17945.3 (d)(8)(A)(2) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(5)(C). It specifies that the product manufacturer that uses the recycling rate option, may designate others to design the methodology, perform the studies and submit supporting documentation to the Department on its behalf. This is needed to clarify that the product manufacturers, who may not have recycling-rate related information, can rely on experts to develop this information and submit it to the Department for review and approval. This may reduce the time the product manufacturers spend developing the details of the proposed methodology and ensure they have adequate time to assess their compliance under this option after the Department reviews and approves the methodology.

Subsection 17945.3 (d)(8)(A)(3) This proposed Subsection is added. It provides 90 calendar days for the Department to review and approve or disapprove the proposed recycling rate methodology. This is to clarify the response times and help ensure the manufacturer has the approved methodology in time to determine compliance for the certification period. This Subsection also clarifies how a product manufacturer may resubmit its methodology if the first submittal is disapproved. In the past, it has taken considerable time to obtain approval of the recycling method, so establishing a reasonable timeframe for both the product manufacturer and the Department is necessary.

Subsection 17945.3 (d)(8)(A)(4) This proposed Subsection is added. It replaces, in part, current Subsection 17946.5 (a)(5)(B). It requires the use of the Department-approved methodology to determine recycling rates submitted in a compliance certification. It specifies that if the product manufacturer selects the particular type, product associated, or resin specific recycling rate option and does not use the Department-approved methodology, the Department may find the product manufacturer out of compliance. In addition, recognizing that a product manufacturer may invest considerable resources in developing an approved recycling methodology, this Subsection ensures that the approved methodology will be valid in future

years, but can be modified using the same process if future circumstances or availability of data changes.

Subsection 17945.3 (d)(8)(B) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(5). It specifies the compliance data required to be submitted with a certification. By requiring the product manufacturer to include the compliance data, this Subsection becomes consistent with the certification requirements of all the other compliance options which require submission of compliance data to evaluate compliance. Compliance data is necessary for the Department to determine if the product manufacturer is in compliance with the particular type, product associated, or single resin type container recycling rate compliance option. Per statute the Department is not required to expend state funds to conduct a survey or calculate the recycling rate (PRC 42310 (b)).

Subsection 17945.3 (d)(8)(B)(1) This proposed Subsection is added. It replaces, in part, current Subsection 17946.5 (a)(5)(A) and (E). It requires the product manufacturer include the recycling rate expressed as a percentage, for the particular type, product associated, or resin specific containers sold in California. Expressing the recycling rate as a percentage ensures the submitted rate is easily understood relative to the compliance threshold. The information is necessary for the Department to determine if the product manufacturer is in compliance with the recycling rate option, and the Department is not required to expend state funds to conduct a survey or calculate the recycling rate (PRC 42310 (b)).

Subsection 17945.3 (d)(8)(B)(2) This proposed Subsection is added. It requires the number of particular type, product associated, or resin specific containers collected, recycled or diverted from disposal in California. This data is needed for use in any recycling rate calculation method.

Subsection 17945.3 (d)(8)(B)(3) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(5)(C). It requires the product manufacturer to provide a copy of the Department approved recycling rate methodology used as well as a detailed explanation of the methodology used to determine the sales rate. The information is needed to evaluate the product manufacturer's compliance claim under this option, and it should support the claimed recycling rate since the Department is not required to expend state funds to conduct a survey or calculate the recycling rate (PRC 42310 (b)).

Subsection 17945.3 (d)(8)(B)(4) This proposed Subsection is added. It replaces, in general, information contained in current Subsection 17946.5 (a)(7). It requires the product manufacturer to submit any other information it believes is necessary to support its compliance claim. This helps ensure the Department receives all necessary information with the product manufacturer's certification and can complete its evaluation of the certification in a timely manner.

Subsection 17945.3 (d)(9) This proposed Subsection is added. It replaces information contained in current Subsection 17946.5 (a)(6) and identifies all of the information that must be included in a certification if claiming compliance using the floral industry option. Product manufacturers expressed concerns that the current regulations are difficult to follow when trying to meet the floral industry compliance option because the information is scattered throughout the regulations. This proposed Subsection consolidates the information that a product manufacturer must provide for the Department to evaluate compliance under this option. The introductory statement clearly specifies what is to be submitted per the subsequent subsections.

Subsection 17945.3 (d)(9)(A) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(6) and introduces the content of the subsequent subsections.

Subsection 17945.3 (d)(9)(A)(1) This proposed Subsection is added. It replaces, in part, information in current Subsection 17946.5 (a)(6)(A). It requires the product manufacturer to submit the proposed methodology used to determine its recycling rate within 90 calendar days of receiving notice that it will be required to submit a certification pursuant to Section 17945.1 (d). This allows time for the Department to review and approve the methodology during the certification period so the product manufacturer will be able to determine compliance prior to the certification due date.

Subsection 17945.3 (d)(9)(A)(1)(a) This proposed Subsection is added. It requires the product manufacturer to include in its request how the proposed methodology will determine the number of RPPCs sold to the floral industry in California. This is a key piece of information for determining a methodology for assessing compliance under this option.

Subsection 17945.3 (d)(9)(A)(1)(b) This proposed Subsection is added. It requires the product manufacturer include in its request how the proposed methodology will determine the total number of RPPCs sold in California. This is another basic piece of information needed for determining a methodology for assessing compliance under this option.

Subsection 17945.3 (d)(9)(A)(1)(c) This proposed Subsection is added. It requires the product manufacturer include in its request how the proposed methodology will determine the average reuse, in years, of each RPPC purchased by the floral industry in California. This is another basic piece of information needed for determining a methodology for assessing compliance under this option.

Subsection 17945.3 (d)(9)(A)(2) This proposed Subsection is added. It provides 90 calendar days for the Department to review and approve or disapprove the proposed recycling rate methodology. This is to clarify the response times and help ensure the manufacturer has the approved methodology in time to determine compliance for the certification period. This Subsection also clarifies how a product manufacturer may resubmit its methodology if the first submittal is disapproved. In the past, it has taken considerable time to obtain approval of the methodologies so establishing a reasonable timeframe for both the product manufacturer and the Department is necessary.

Subsection 17945.3 (d)(9)(A)(3) This proposed Subsection is added. It requires the use of the Department-approved methodology to determine reuse rates submitted in a compliance certification. It specifies that if the product manufacturer does not use the Department-approved methodology for this option, the Department may find the product manufacturer out of compliance. In addition, recognizing that a product manufacturer may invest considerable resources in developing an approved methodology and consistent with the treatment of the recycling rate methodology (in 17945.3 (d)(8)(A)), this Subsection ensures that the approved methodology will be valid in future years but can be modified using the same process if future circumstances or availability of data changes.

Subsection 17945.3 (d)(9)(B) This proposed Subsection is added. It clarifies the compliance data that must be submitted in a product manufacturer's certification claiming compliance under this option. It replaces current Subsection 17946.5 (a)(6) but expands on it, as current

Subsection 17946.5 (a)(6) only requires the product manufacturer to submit its methodology but does not specify the required compliance data. By identifying the required compliance data, this Subsection becomes consistent with the certification requirements for all the other compliance options which require submission of specified data so the Department can verify if the product manufacturer is in compliance with the selected option.

Subsection 17945.3 (d)(9)(B)(1) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946.5 (a)(6)(C). It requires the product manufacturer identify the number of times each floral container is reused as this is necessary to evaluate compliance with this option. PRC Section 42310 (e) specifies a RPPC may comply if it contains floral preservative and is subsequently reused by the floral industry for at least two years.

Subsection 17945.3 (d)(9)(B)(2) This proposed Subsection is added. It requires the number of floral containers sold in California. This information is necessary to evaluate the proportion of floral containers reused when evaluating compliance with this option.

Subsection 17945.3 (d)(9)(B)(3) This proposed Subsection is added. It requires the product manufacturer to provide a copy of the Department-approved floral compliance methodology used to determine the reuse rate. The information is needed to evaluate the product manufacturer's compliance claim under this option since the original methodology may have been approved several years earlier and no longer be readily accessible in the Department's on-site files.

Subsection 17945.3 (d)(9)(B)(4) This proposed Subsection is added. It replaces, in general, information contained in current Subsection 17946.5 (a)(7). It requires the product manufacturer submit any other information it believes is necessary to support its compliance claim. This helps ensure the Department receives all necessary information with the product manufacturer's certification and can complete its evaluation of the certification in a timely manner. It also makes this Subsection consistent with the particular type, product associated, or single resin type RPPC recycling compliance rate option.

Subsection 17945.3 (e) This proposed Subsection is added to provide another compliance option based on a statutory change. PRC Section 42310.3 was added by , Statutes of 2005, Chapter 666 (SB 743) and amended by Statutes of 2006, Chapter 144 (SB 1344). PRC Section 42310.3 allows a product manufacturer to demonstrate compliance through its actions, or the actions of another company under the same corporate ownership, during the same measurement period by:

1. Using California postconsumer material in RPPCs, plastic products or plastic packaging in an amount equivalent to or exceeding the postconsumer material content that the RPPC is otherwise required to contain (at least 25%); OR
2. Contracting for purchase and export of California postconsumer material to another state for manufacture of RPPCs, other plastic products or plastic packaging in an amount equivalent to or exceeding the postconsumer material content that the RPPC is otherwise required to contain (at least 25%).

This proposed section identifies the specific information the product manufacturer needs to submit to demonstrate compliance with this particular compliance option and is consistent with information required for the 25 percent postconsumer compliance option.

Subsection 17945.3 (e)(1) This proposed Subsection is added. It identifies the additional information a product manufacturer must submit in its certification if claiming compliance through either means under this alternative method option. It references the description of the alternative compliance method in Subsection 17944.1 (a)(1) and (2). This information was not previously included in regulation and is necessary to describe what documentation is required for this new statutory option.

Subsection 17945.3 (e)(1)(A) This proposed Subsection is added. It requires the product manufacturer to identify the number and weight, in grams, of each other plastic product or plastic package sold during the measurement period. This additional information is required to support a product manufacturer's compliance claim under this option which allows credit for postconsumer material used in other plastic products or packaging (not just RPPCs). Grams are used here, as elsewhere throughout these regulations, to capture the weight of individual containers or packages in a uniform measure.

Subsection 17945.3 (e)(1)(B) This proposed Subsection is added. It requires the weight (in grams, for consistency) of postconsumer material used in manufacturing the RPPCs, other plastic products, and/or plastic packaging. The information is required to perform the compliance calculation in proposed Subsection 17945.5 (c) and for the Department to evaluate if the appropriate amount of postconsumer material has been consumed as required by PRC Section 42310.3.

Subsection 17945.3 (e)(1)(C) This proposed Subsection is added. It requires the percentage of postconsumer material used in each RPPC or other plastic product or plastic packaging as calculated using the formula in Section 17945.5 (c). This information is needed to evaluate compliance with this option based on use of postconsumer material.

Subsection 17945.3 (e)(1)(D) This proposed Subsection is added. It requires the total weight (in grams, for consistency) of California postconsumer material purchased and used to manufacture RPPCs subject to the Article, or RPPCs or other plastic packaging or products not subject to the Article. This information is necessary to verify compliance under the requirement to use a certain amount of postconsumer material from California.

Subsection 17945.3 (e)(1)(E) This proposed Subsection is added. It requires product manufacturers to provide the contact information of its suppliers of California postconsumer material. This enables the Department to verify such information as needed when evaluating a product manufacturer's compliance certification using this option

Subsection 17945.3 (e)(1)(F) This proposed Subsection is added. It requires additional detail about the postconsumer material reported if such material includes any as defined in Sections 17943 (q)(1) or (2) (use of RPPCs holding obsolete or unsold products or rejected finished plastic packaging). This will allow the Department to review any claimed usage of such other "postconsumer" materials and addresses stakeholder comments about how product manufacturers can document use of such material in their containers.

Subsection 17945.3 (e)(1)(F)(1) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to include contact information for the supplier of these plastics. The contact information includes the same basic details (name, address, phone number, e-mail) as is required in other situations throughout the regulations, and is needed to allow the Department to verify the information, if needed, during its evaluation of the compliance certification.

Subsection 17945.3 (e)(1)(F)(2) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the total weight (in grams, for consistency) of such plastic received. The information is required to perform the compliance calculation in proposed Subsection 17945.5 (c) and for the Department to evaluate if an adequate amount of postconsumer material has been consumed as required by PRC Section 42310.3.

Subsection 17945.3 (e)(1)(F)(3) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the date it received this plastic. The information is needed for the Department to evaluate if the reported postconsumer material was used in the product manufacturers' containers during the measurement period for which compliance is claimed.

Subsection 17945.3 (e)(1)(F)(4) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to describe the material. The information is needed for the Department to evaluate if the reported material meets the definition of postconsumer material in Subsection 17943 (q). The subsequent subsections identify the minimum information to be included.

Subsection 17945.3 (e)(1)(F)(4)(a) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the type of plastic resin. The information is needed to help the Department evaluate if the reported material meets the definition of postconsumer material in Subsection 17943 (q) and was likely used as such in the RPPCs (of specified resin type(s)) for which compliance is claimed.

Subsection 17945.3 (e)(1)(F)(4)(b) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the form in which the material was received (e.g., baled, flaked). The information is needed to help the Department evaluate if the reported material meets the definition of postconsumer material in Subsection 17943 (q) and would otherwise commonly have been disposed.

Subsection 17945.3 (e)(1)(F)(4)(c) This proposed Subsection is added. It requires the product manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to include bar codes, stock keeping units, or other descriptive information of the material. This information is needed to help the Department verify that the plastic was comprised of obsolete or unsold RPPCs and/or rejected finished plastic packaging and thus meets the definition of postconsumer material in Subsection 17943 (q).

Subsection 17945.3 (e)(2) This proposed Subsection is added. It specifies the documentation required of product manufacturers claiming compliance through the contractual arrangement option specified in Section 17944.1 (a)(2) in addition to the documentation required in Subsection 17945.3 (e)(1)(A) through (e)(1)(F)(4)(c). This information is necessary so the Department can verify compliance with this option. This information was not previously included in regulation and is necessary to describe what documentation is required for this new statutory option.

Subsection 17945.3 (e)(2)(A) This proposed Subsection is added. It requires the total weight of California postconsumer material exported to another state (in grams, for consistency) if this amount is different from the total weight of California postconsumer material purchased and reported per Subsection (e)(1)(D) of this Section. The information is needed to evaluate the compliance claim because the compliance is based, in part, on the amount of postconsumer material exported to another state (PRC Subsection 42310.3(a)(2) and proposed Subsection 17944.1 (b)).

Subsection 17945.3 (e)(2)(B) This proposed Subsection is added. It requires that the product manufacturer provide basic contact information for its contractors, and a copy of the contractual agreements for the purchase and consumption of California postconsumer material to be exported to another state for manufacturing RPPCs or other plastic products or plastic packaging. The Department needs this information to verify the product manufacturer's compliance certification under this option. The proposed Subsection is consistent with PRC Section 42310.3 (a)(2).

Subsection 17945.3 (e)(2)(C) This proposed Subsection is added. It requires the names, contact persons, addresses, e-mails and phone numbers of the manufacturers to which the California postconsumer material was exported. The Department needs this information to help verify the product manufacturer's compliance certification under this option.

Subsection 17945.3 (e)(2)(D) This proposed Subsection is added. It requires the product manufacturer submit documentation from the contracted product manufacturer that the California postconsumer material was used in the manufacture of RPPCs, plastic products or plastic packaging during the measurement period. The Department needs documentation to verify that the contracted product manufacturer used the California postconsumer material in the specified types of packaging and during the measurement period as specified in PRC Section 42310.3.

SECTION 17945.4 Container Manufacturer Certification Information.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

This proposed Section is added. It replaces, in part, information contained in current Subsection 17946 (h). Per the description on page 2 of this document, the reason for deleting portions of current Section 17946 is explained under proposed Section 17946.

It consolidates in one Section the information container manufacturer certifications must include. This addresses stakeholder concerns that the current regulations are difficult to use as the certification information is scattered throughout.

Subsection 17945.4 (a) This proposed Subsection is added to specify the minimum information a container manufacturer must provide in its certification to product manufacturers. The product manufacturers need this information to support their compliance claims.

Subsection 17945.4 (a)(1) This proposed Subsection is added. It replaces information contained in current Subsection 17946 (h)(1). It specifies the container manufacturer must supply the company name, mailing address, web address (if available), e-mail, telephone number and name and title of the person responsible for supplying the information. This allows the product manufacturer adequate contact information in case follow up is needed, and is consistent with contact information required elsewhere throughout these regulations.

Subsection 17945.4 (a)(2) This proposed Subsection is added. It replaces contact information contained in current Subsection 17946 (h)(2). It requires the contact information for the product manufacturer that has requested the container manufacturer certification. This helps the Department ensure that it has the correct supporting documentation for the product manufacturer certifications it is reviewing.

Subsection 17945.4 (a)(3) This proposed Subsection is added. It replaces current Subsection 17946 (h)(3). It specifies the container information needed to evaluate compliance with the postconsumer material option when postconsumer material has been used in the containers. This Subsection introduces the list of information included in the subsequent subsections.

Subsection 17945.4 (a)(3)(A) This proposed Subsection is added to require the type and volume of each RPPC incorporating postconsumer material. The product manufacturer needs this information to support its certification for postconsumer material usage. Secondly, the Department needs this information (which is submitted along with the product manufacturer's certification) to verify that the RPPCs documented by the container manufacturer meet the definition of a RPPC in proposed Subsection 17943 (aa) and are subject to the requirements.

Subsection 17945.4 (a)(3)(B) This proposed Subsection is added. It replaces, in part, information contained in current Subsections 17946 (h)(3) and 17946.5 (a)(1)(A). It specifies that the container manufacturer must provide the total weight (in grams, for consistency) of each RPPC. This is consistent with the requirement that a product manufacturer document the weight of the product, and allows the Department to review the supporting calculations in a product manufacturer's compliance certification claiming the postconsumer material option.

Subsection 17945.4 (a)(3)(C) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946 (h)(3). It specifies the container manufacturer must provide the weight (in grams, for consistency) of postconsumer material used to manufacture the specified RPPC(s). The information is needed for the product manufacturer to calculate (and the Department to evaluate) its compliance claim using postconsumer material.

Subsection 17945.4 (a)(3)(D) This proposed Subsection is added. It requires the container manufacturer to identify the percentage of postconsumer material in each RPPC. This enables the product manufacturer to assess its compliance levels when completing its certification, and for the Department to evaluate the product manufacturer's compliance claim against the supporting documentation.

Subsection 17945.4 (a)(3)(E) This proposed Subsection is added. It requires additional detail about the postconsumer material reported if such material includes any as defined in Sections 17943 (q)(1) or (2) (e.g., use of RPPCs holding obsolete or unsold products or rejected finished plastic packaging). This will enable the product manufacturer to prepare its certification and help the Department review any claimed usage of such other “postconsumer” materials. The Subsection also addresses industry concerns about how product manufacturers can document use of such material in their containers.

Subsection 17945.4 (a)(3)(E)(1) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to include contact information for the supplier of these plastics. The contact information includes the same basic details (name, address, phone number, e-mail) as is required in other situations throughout the regulations, and is needed to allow the product manufacturer and the Department to verify the information, if needed during the preparation and evaluation, respectively, of the compliance certification.

Subsection 17945.4 (a)(3)(E)(2) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the total weight (in grams, for consistency) of such plastic received. The information is required by the product manufacturer to perform the compliance calculation in proposed Subsection 17945.5 (c) and for the Department to evaluate if an adequate amount of postconsumer material has been consumed as required by PRC Section 42310.3.

Subsection 17945.4 (a)(3)(E)(3) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the date it received this plastic. The information is needed for the product manufacturer (and secondarily, the Department) to evaluate if the reported postconsumer material was used in the product manufacturers’ containers during the measurement period for which compliance is claimed.

Subsection 17945.4 (a)(3)(E)(4) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to describe the material. The information is needed to help the product manufacturer (and secondarily, the Department) to evaluate if the reported material meets the definition of postconsumer material in Subsection 17943 (q). The subsequent subsections provide the minimal information to include.

Subsection 17945.4 (a)(3)(E)(4)(a) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the type of plastic resin. The information is needed to help the product manufacturer (and secondarily, the Department) evaluate if the reported material meets the definition of postconsumer material in Subsection 17943 (q) and was likely used as such in the RPPCs (of specified resin type(s)) for which compliance is claimed.

Subsection 17945.4 (a)(3)(E)(4)(b) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers to identify the form in which the material was received (e.g., baled, flaked). The information is needed to help the product manufacturer (and

secondarily, the Department) evaluate if the reported material meets the definition of postconsumer material in Subsection 17943 (q) and would otherwise commonly have been disposed.

Subsection 17945.4 (a)(3)(E)(4)(c) This proposed Subsection is added. It requires the container manufacturer using such plastics as defined in Subsections 17943 (q)(1) or (2) for postconsumer content in its containers, to include bar codes, stock keeping units, or other descriptive information of the material. This information is needed to help the product manufacturer (and secondarily, the Department) verify that the plastic was comprised of obsolete or unsold RPPCs and/or rejected finished plastic packaging and thus meets the definition of postconsumer material in Subsection 17943 (q).

Subsection 17945.4 (a)(4) This proposed Subsection is added. It replaces information contained in current Subsection 17946 (h)(4). It clarifies and specifies what information the container manufacturer must provide to document source reduction that was achieved by a reduction in RPPC weight. This information is needed by product manufacturers (and secondarily, the Department) to assess compliance using the source reduction options involving container weight reduction. The subsequent subsections detail the contents.

Subsection 17945.4 (a)(4)(A) This proposed Subsection is added to require that container manufacturers document the type and volume of container in their certifications. The product manufacturer needs this information for its certification and the Department needs this information to verify that the RPPCs documented by the container manufacturer do meet the definition of a RPPC in proposed Subsection 17943 (aa) and are subject to the program requirements.

Subsection 17945.4 (a)(4)(B) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17946 (h)(4). It specifies that the container manufacturer must provide the weight (in grams, for consistency) of each type and volume of RPPC before and after source reduction. The product manufacturer (and secondarily, the Department) need information on container weight before and after source reduction to calculate whether the container achieves the 10 percent reduction in weight as required in the definition of source reduced container (proposed Subsection 17943 (af)) and to include this information in its certification.

Subsection 17945.4 (a)(4)(C) This proposed Subsection is added. It requires the container manufacturer to include in its certification the date (typically this will be month and year) of the source reduction. The product manufacturer needs this information to complete its certification. It is necessary so the Department can determine whether the source reduction meets the PRC requirement of being compared to the package used for the product by the product manufacturer on January 1, 1995, or the packaging used for that product by the product manufacturer over the course of the first full year of commerce in California (PRC Section 42301 (j)(1)(B)(i-ii)).

Subsection 17945.4 (b) The proposed Subsection is added. It replaces information contained in current Subsection 17946 (h)(6). The proposed Subsection clarifies the requirement that each container manufacturer's certification be signed under penalty of perjury and specifies the format of the signature. This ensures the certification is signed by an authorized representative of the company and the format is consistent with information required of product manufacturers in this program as well as by companies regulated under other CalRecycle programs, such as

the At-Store Recycling Program, and local government reports submitted to the Department. The inclusion of the phrase “to the best of my knowledge and belief” here and in the other such signature blocks in these regulations addresses stakeholders’ concerns about what they can attest to.

SECTION 17945.5 Compliance Calculation and Formulas.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The proposed section is moved from current Section 17946.5 (Documentation Requirements) and amended. Product manufacturers stated that it was very confusing and difficult to determine all the certification requirements with information spread throughout the regulations. Stakeholders also said the question and answer format of the current regulations was confusing. The proposed Section deletes the current question and answer format. For clarity, the proposed regulations are reorganized so that the compliance calculations and formulas are together in this proposed section and separated from product manufacturer and container manufacturer certification requirements (now in proposed Sections 17945.3 and 17945.4, respectively) . The product manufacturers will use these formulas to determine their compliance with specific compliance options, and the Department will use the formulas, and may use additional analyses, to verify the calculations.

Subsection 17945.5 (a) The current Subsection (a), including the question and answer format, is deleted. The proposed Subsection (a) introduces the formulas product manufacturers are to use in determining their compliance under various compliance options and clarifies that this is the purpose of the formulas. This will help ensure all product manufacturers use the same applicable formulas to assess their compliance, and this, in turn, helps ensure fair and consistent determinations of compliance and penalties, if applicable, by the Department. Also included in this introductory Subsection are three technical informational items that apply to all the subsequent formulas: calculating to two decimal places, measuring weight in grams, and calculating by container line (or groups of such lines, where applicable). The measurement to two decimal places is for consistency across product manufacturers’ certifications and to accurately and consistently determine the progress in achieving compliance and, if applicable, when assessing penalties as specified in Section 17949. The weight in grams is used for consistency throughout the regulations as grams are the usual measure of the weight of a RPPC. Similarly for clarity and consistency, it is noted that all calculations should be by container line. This last item also responds to comments from product manufacturers that since they often use the same container for various products (e.g., various scents of dish soap in the same type of bottle), it is simpler if they can consolidate their certification reporting by container line rather than by product.

Subsection 17945.5 (b) The proposed Subsection is moved from current Subsection 17946.5 (a)(1) and amended. For clarity throughout this Section, titles are added at the start of each Subsection to identify the compliance option to which the subsequent formulas apply. The introductory sentence is amended to clearly state that Subsection (b) is for RPPCs for which the product manufacturer is claiming the postconsumer material content option. The wording is reorganized, and the cross-reference to Section 17944 (a)(1) added, for clarity and consistency. Similar language is added to introduce each of the subsequent subsections for the other compliance options.

Subsection 17945.5 (b)(1) The proposed Subsection is moved from current Subsection 17946.5 (a)(1)(B) and amended. The first sentence is deleted as the container data to be provided in product manufacturer certifications is now listed in proposed Section 17945.3 (c), and the additional detail for those containers using the postconsumer material option in Section 17945.3 (d)(1). The second paragraph of current Subsection 17946.5 (a)(1)(B) is amended to be numbered subsection (1), to delete the words “or multiple”, and to add the phrase “rigid plastic packaging.” This is done for clarity and consistency as throughout this Section the formulas for “single lines” are separated from those for “multiple lines,” and throughout these regulations the term “container” is replaced with “rigid plastic packaging container” whenever applicable.

The formula in the current Subsection 17946.5 (a)(1)(B) is deleted and replaced by one which uses symbols for clarity and consistency of format throughout these regulations, and which only addresses the single line. Also for clarity, here and throughout the regulations, the symbols used in the formula are all defined immediately following the formula.

Subsection 17945.5 (b)(2) This proposed Subsection replaces the “multiple line” component of the formula previously included in Section 17945.5 (a)(1)(B). As described above, for greater clarity for those using these formulas, the formulas for single container lines are separated from those for averaging multiple container lines., For clarity, the new introductory phrase is added and then the formula is given in symbols and the symbols defined.

Subsection 17945.5 (b)(3) The fourth paragraph of current Subsection 17946.5 (a)(1)(B) is renumbered and amended to delete the words “percent of” before, and add the words “material content” after, the word postconsumer, and add “.00 percent” after 25. The addition of “material content” makes the term consistent throughout the regulations. The shift in the term “percent” and addition of “.00” is for clarity and also is consistent with proposed Subsection 17945.5 (a) that specifies that all calculations be carried out to two decimal places.

Subsection 17945.5 (c) This proposed Subsection is added. It is needed to clearly specify the formula to use if compliance is claimed through the alternative container compliance method option under proposed Section 17944.1. The proposed formula is consistent with PRC Subsections 42310 (a)(1) and (a)(2).

The proposed introductory statement specifies when to use the subsequent formula, for clarity and consistency with the rest of the Section. The formula and the definitions of the symbols immediately follow, consistent with the format for other formulas in the regulations. Under this option, however, only one formula is given as this option inherently involves averaging multiple container and packaging lines. Also, since the alternative method container compliance option allows for compliance through use of postconsumer plastic in RPPCs or other plastic products or packaging, the equation includes numbers and weights of the allowed “other” plastic packaging containers or products.

To close this Subsection, a statement as to the compliance threshold is added, for consistency with the other Subsections in this Section and for clarity for the product manufacturers using the formulas.

Subsection 17945.5 (d) This proposed Subsection is moved from current Subsection 17946.5 (a)(2) and amended. The title, Source Reduction Compliance is added for ease of use and consistent formatting throughout the Section. The proposed introductory statement is amended

to specify when to use the subsequent formula, and for clarity and consistency with the other Subsections within this Section.

The formulas in current Subsection 17946.5 (a)(2)(C) are confusing as they try to encompass all the source reduction sub-options. There are differences in what is needed to calculate compliance by reducing container weight, concentrating product, or a combination of the two. Therefore, this information has been reorganized into four Subsections for single lines, plus a formula for multiple lines. The formulas are in symbols and the symbols are defined, consistent with the format for the other formulas in the regulations.

Subsection 17945.5 (d)(1) This proposed Subsection is moved from current Subsection 17946.5 (a)(2)(C) and amended. The introductory phrase is reworded for consistency and clarity that the following formula applies to a single RPPC line and only where the source reduction has been done by reducing the weight of the container. This formula in proposed (d)(1) replaces the current formula (which attempts to cover both weight and uses in a container). The symbols used in the formula are consistently formatted with those used in the other formulas in these regulations, and the symbols are defined just below the formula, for clarity and consistency.

The second formula currently in 17946.5 (a)(2)(C) for source reduction across multiple lines is deleted and replaced by the formula now in 17945.5 (d)(4). The phrase about the threshold for compliance at the end of current subsection 17946.5 (a)(2)(C) is now separately numbered as 17945.5 (d)(5).

Subsection 17945.5 (d)(2) The proposed Subsection is added to provide a separate formula for a single RPPC line where compliance is claimed by source reduction where the product has been concentrated. As noted above, separate formulas are provided for the varied source reduction compliance options for greater clarity, mathematical accuracy, and for consistency with how product manufacturers certify compliance under the specific source reduction options. For consistency and clarity, an introductory phrase specifies the purpose, and then the formula for a single RPPC line where the product has been concentrated is provided. The formula is in symbols and the symbols are defined, consistent with the format for the other formulas in the regulations.

Subsection 17945.5 (d)(3) This proposed Subsection is added to provide a separate formula for a single RPPC line with a combination of concentrating the product and reducing the weight of the RPPC that holds the product. For consistency and clarity, an introductory phrase specifies the purpose, and then the formula for a single RPPC line with a combination of concentrating the product and reducing the weight of the RPPC that holds the product is provided. The formula is in symbols and the symbols are defined, consistent with the format for the other formulas in the regulations.

Subsection 17945.5 (d)(4) This proposed Subsection replaces the second formula in current 17946.5 (a)(2)(C) for averaging multiple lines. The proposed formula is for averaging source reduction over multiple RPPC lines with either container weight reduction and/or product concentration. The formula was reformatted to improve ease of use and for consistency with the formatting of the other formulas in this proposed Section 17945.5. For consistency and clarity, an introductory phrase specifies the purpose, and then the formula for averaging source reduction over multiple RPPC lines with either container weight reduction and/or product

concentration is provided. The formula is in symbols and the symbols are defined, consistent with the format for the other formulas in the regulations.

Subsection 17945.5 (d)(5) This proposed Subsection is moved from the end of current Subsection 17946.5 (a)(2)(C) and amended. It is moved to the end of the Subsection for consistency in where these statements of threshold compliance values are shown throughout this Section, and for clarity that the Subsection applies to all of the preceding Subsections and formulas for determining compliance through the source reduction option. It is amended to add “.00 percent” at the end of the sentence for clarity and for consistency with proposed Section 17945.5 that specifies that calculations be carried out to two decimal places.

Subsection 17945.5 (e) This proposed Subsection is moved from current Subsection 17946.5 (a)(3) and amended. The title, is added for ease of use and consistent formatting throughout the Section. The introductory statement is amended for clarity and consistency with the other Subsections within this Section.

Subsection 17945.5 (e)(1) This proposed Subsection is moved from current Subsection 17946.5 (a)(3)(C) and amended. The introductory phrase is reworded for consistency and to clarify that the following formula applies to a single RPPC line. The phrase “rigid plastic packaging” is added before “container line” to clarify that the focus of compliance is on containers and for consistent use of the term throughout the regulations. For clarity and consistency throughout the Section, the current formula is replaced with one using symbols and immediately followed by the definitions of the symbols. The definition of current symbol “n” is deleted as it only applies to the formula for multiple lines, now in Subsection 17945.5 (e)(2).

Subsection 17945.5 (e)(2) This proposed Subsection is moved from current Subsection 17946.5 (a)(3)(C) and amended. For clarity and consistency, the introductory phrase is amended to state that the following formula is for “averaging” multiple “rigid plastic packaging” container lines. The formula is simplified using symbols. The symbols used in the formula are consistently formatted with those used in the other formulas in these regulations, and the symbols are defined just below the formula, for clarity and consistency. The current definitions of symbols are deleted as they do not apply to the formula.

Subsection 17945.5 (e)(3) This proposed Subsection is moved from Subsection 17946.5 (a)(3)(B)(3) and amended. The term “strength” is replaced by “concentration” for consistent use of terms throughout the regulations.

Subsection 17945.5 (e)(4) The final paragraph in current Subsection 17946.5 (a)(3)(C) is numbered as “(4)” and amended. The phrase “.00 reuses” is added at the end of the sentence for clarity as to the threshold of compliance for this option. The addition of “.00” is also consistent with proposed Section 17945.5 (a) that specifies that calculations be carried out to two decimal places.

Subsection 17945.5 (f) This proposed Subsection is moved from current Subsection 17946.5 (a)(4) and amended. The title is added for consistency and ease of use. An introductory sentence is added to clarify that this Subsection applies to compliance claimed through the refilling of the container pursuant to Section 17944 (a)(3).

Subsection 17945.5 (f)(1) This proposed Subsection is moved from current Subsection 17946.5 (a)(4)(C) and amended. The introductory phrase is reworded for consistency and

clarity that the following formula applies to a single RPPC line. The phrase “rigid plastic packaging” is added before “container” and “line” is added after, to clarify that the focus of compliance is on container lines and for consistent use of terminology throughout the regulations. For clarity and consistency throughout the Section, the current formula is replaced with a formula using symbols and immediately followed by the definitions of the symbols, also for clarity and ease of use.

Subsection 17945.5 (f)(2) This proposed Subsection is moved from current Subsection 17946.5 (a)(4)(C) and amended. The introductory phrase is reworded for consistency and clarity that the following formula applies to averaging multiple RPPC lines. The term “averaging” and the phrase “rigid plastic packaging” are added to clarify the focus of this formula, consistent with others for multiple lines in this Section. For clarity and consistency throughout the Section, the current formula is then replaced with one using symbols and immediately followed by the definitions of the symbols, also for clarity and ease of use.

Subsection 17945.5 (f)(3) The final paragraph in current Subsection 17946.5 (a)(4)(C) is numbered as “(3)” and amended. The word “with” is replaced by “under” for consistency with all the similar statements in this Section. The phrase “.00 refills” is added at the end of the sentence for clarity as to the threshold of compliance for this option. The addition of “.00” is also consistent with proposed Section 17945.5 (a) that specifies that calculations be carried out to two decimal places. The number of refills required to meet compliance using this option is corrected from “6” to “5” consistent with PRC Section 42301 (c).

SECTION 17946 Waivers.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The current Section 17946 is moved to Section 17945.2, Compliance Certifications, and amended. The proposed Section 17946 is added. The title "Waivers" is added for ease of use. The proposed Section replaces, in part, information contained in current Section 17944.2.

Subsection 17946 (a) The current Subsection 17946 (a) is moved to Section 17945.2 and amended.

The proposed Subsection 17946 (a) is added. It replaces, in part, information in current Subsection 17944.2 (a)(4). This proposed language clarifies that waivers only apply to a newly introduced product, and the product manufacturer must petition the Department for a waiver (as provided for in PRC Section 42330 (c)). This section is consistent with PRC Section 42330 (a)(2) that says the Department shall grant a waiver from postconsumer material content, but not from any other compliance option listed in PRC Section 42310. That means if a container cannot meet the postconsumer material compliance option, it must meet another compliance option as explained further in Subsection 17944 (a)(1).

Subsection 17946 (a)(1) This Subsection is deleted. Details of what container manufacturers’ certifications must contain to document postconsumer material is now in proposed Subsection 17945.4 (a)(3).

Subsection 17946 (a)(2) This Subsection is deleted. Details of what container manufacturers’ certifications must contain to document source reduction by container weight is now in proposed

Subsection 17945.4 (a)(4). Information on maintaining the confidentiality of proprietary information is addressed in proposed Section 17948.

Subsection 17946 (b) The current Subsection 17946 (b) is deleted. It is replaced by information in proposed Subsection 17945.1, Pre-Certification Process, and proposed Subsection 17945.2 (c), Compliance Certifications.

The proposed Subsection 17946 (b) is added. It replaces, in part, information contained in current Subsection 17944.2 (a)(4). It specifies that a waiver from compliance with the requirements in proposed Section 17944 shall be valid for 12 months from the date on which the newly introduced product is first sold or offered for sale in California. This is consistent with PRC Section 42330 (c). Stakeholders said current Subsection 17944.2 is confusing in regards to the length of time a new product has a waiver before it must comply with RPPC requirements.

Subsection 17946 (c) Current Subsection 17946 (c) is deleted to eliminate the question and answer format and because use of Department forms is no longer mandatory. At 2007 meetings, stakeholders said the question and answer format of the regulations was confusing.

Proposed Subsection 17946 (c) is added. It replaces, in part information contained in current Subsection 17944.2 (b)(1). The title "Petition for Waiver" is added for ease of use. The proposed Subsection specifies that to receive a waiver, a product manufacturer shall, within 90 days of receiving a certification notice, submit to the Department a written petition that includes the specified information. This language is necessary to clarify the timing for a product manufacturer to request a waiver within the compliance certification process. Limiting product manufacturer waivers to the certification process helps ensure the petitions are relevant to the pending certification cycle, the number of petitions received by the Department is manageable for a given certification cycle, and the petitions contain the information needed.

Recognizing industry concerns that a product manufacturer may have additional new products not known at the time of the certification notice (which is issued early during the measurement period per Subsection 17945.1 (d)(2)), this Subsection also provides that product manufacturers may request a waiver for previously unknown new products identified by the end of the measurement period.

Subsection 17946 (c)(1) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.2 (b)(1). This proposed Subsection requires identification of the newly introduced product for which the waiver is requested. This proposed language corrects and clarifies current language (in Subsection 17944.2 (b)(1)) which indicates that product manufacturers petition for a waiver for a container. Per PRC Section 42330 (c), it is new products in RPPCs that are eligible for waivers. Containers are eligible for exemptions per PRC Section 42340.

Subsection 17946 (c)(2) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.2 (b)(1). The proposed Subsection requires the standard contact information necessary for the Department to follow up on the petition. It is consistent with contact information requested elsewhere in these regulations such as of product manufacturers and container manufacturers.

Subsection 17946 (c)(3) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.2 (b)(1). The proposed Subsection requires

documentation and supporting evidence as to the date the product in question was first sold or offered for sale in California. Per PRC Section 42330 (c), waivers for new products are valid for a year from the date of product introduction, so the Department needs to be able to evaluate whether the petition meets the statutory timeframe.

Subsection 17946 (c)(4) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.2 (b)(1). Per PRC Section 42330 (c), waivers may be granted for newly introduced products so the Department needs to be able to evaluate whether the petitioned product meets the definition of a newly introduced product, as given in proposed Subsection 17943 (m).

Subsection 17946 (c)(5) This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.2 (b)(1). The proposed Subsection uses a standardized statement the product manufacturer must certify to, to be consistent with certifications required elsewhere in this program and in other Department programs, such as the At Store Recycling Program, and local government reports to the Department.

Subsection 17946 (d) The current Subsection 17946 (d) is deleted as proposed criteria for selecting product manufacturers for a certification cycle are now specified in Subsections 17945.1 (b) and (c).

The proposed Subsection 17946 (d) is added. It replaces information contained in Subsection 17944.2 (c). The proposed Subsection requires the Department to review a product manufacturer's petition for a waiver within 90 calendar days, and grant or deny the petition in writing. This statement is needed to ensure that the product manufacturer receives a timely and written response. The period of 90 calendar days is used to give the Department adequate time to review the petition and still provide its response in time for the product manufacturer to determine if it needs to include the given product (and associated container line(s)) in its pending certification, before the certification is due.

Subsection 17946 (e) Current Subsection 17946 (e) is moved to 17945.2 (c) and (d) and amended. The question is deleted to eliminate the confusing question and answer format.

This proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.2 (b)(2). The proposed Subsection expands on PRC 42330 (b)(1) to clarify when and how the Department will grant such a general waiver. Currently, curbside collection and recycling is available in almost all California cities and counties so this general waiver is not in effect.

Subsection 17946 (f) The current subsection is moved to Subsection 17945.2 (e) and amended.

Subsection 17946 (g) The current Subsection 17946 (g) is deleted. The details of what product manufacturers must include with their certification of compliance for each compliance option are now in Section 17945.3, and the details of what container manufacturers are to include in their certifications to product manufacturers are in Section 17945.4. Current Subsection 17946 (g) allows the option of a container manufacturer submitting a standard certification. Historically, the Department had issues with verifying consistency between standard container manufacturer certifications and individual product manufacturer certifications so has eliminated the "standard certification" option.

Subsection 17946 (h) The current Subsection 17946 (h) is deleted. It is replaced by information contained in proposed 17945.4 (a) that consolidates container manufacturer certification requirements.

Subsection 17946 (h)(1) The current Subsection 17946 (h)(1) is deleted. The details of what contact information a container manufacturer must provide in its certification are now included in proposed Subsection 17945.4 (a)(1).

Subsection 17946 (h)(2) The current Subsection 17946 (h)(2) is deleted. The contact information is replaced by the information included in proposed Subsection 17945.4 (a)(2). The second sentence, "If you supply a standard form to all customers expressing compliance with either the postconsumer material or source reduction compliance options as described in (g) of this section and which includes the information required in this section, then you do not need to provide the information in the previous sentence;" is deleted. The Department had issues with verifying consistency between standard form container manufacturer certifications and individual product manufacturer certifications, so has eliminated the "standard certification" option.

Subsection 17946 (h)(3) The current Subsection 17946 (h)(3) is deleted. The details of what information on postconsumer material is required in a container manufacturer's certification is now in proposed Subsection 17945.4 (a)(3).

Subsection 17946 (h)(4) The current Subsection 17946 (h)(4) is deleted. The details of what information on source reduction is required in a container manufacturer's certification is now in proposed Subsection 17945.4 (a)(4).

Subsection 17946 (h)(5) The current Subsection 17946 (h)(5) is deleted. It is replaced by the listing of information contained in proposed Subsection 17945.4 for container manufacturer certifications.

Subsection 17946 (h)(6) The current Subsection 17946 (h)(6) is deleted. The requirements regarding who may sign the container manufacturer's certification, and the statement to include, are now in proposed Subsection 17945.4 (b).

Subsection 17946 (i) The current Subsection 17946 (i) is moved to proposed Section 17945.3 and amended.

Subsection 17946 (i)(1) The current Subsection 17946 (i)(1) is moved to proposed Section 17945.3 (b)(1) and amended.

Subsection 17946 (i)(2) The current Subsection 17946 (i)(2) is moved to proposed Section 17945.3 (b)(2), (c)(2) and (c)(5) and amended. The current Subsection language regarding the advertised name of the regulated containers and resin type are moved to Subsections 17945.3 (c)(2) and (c)(5), respectively, to be listed with the other container-related information.

Subsection 17946 (i)(3) The current Subsection 17946 (i)(3) is deleted. The specific information, by compliance option, to be included in product manufacturers' certifications is now in proposed Subsection 17945.3 (d).

Subsection 17946 (i)(3)(A) The current Subsection 17946 (i)(3)(A) is deleted. The certification information specific to the postconsumer material option is now in proposed Subsection 17945.3 (d)(1).

Subsection 17946 (i)(3)(B) The current Subsection 17946 (i)(3)(B) is deleted. The certification information specific to the recycling rate option is now in proposed Subsection 17945.3 (d)(8).

Subsection 17946 (i)(3)(C) The current Subsection 17946 (i)(3)(C) is deleted. The certification information specific to the reuse option is now in proposed Subsection 17945.3 (d)(6).

Subsection 17946 (i)(3)(D) The current Subsection 17946 (i)(3)(D) is deleted. The certification information specific to refillable containers is now in proposed Subsection 17945.3 (d)(7).

Subsection 17946 (i)(3)(E) The current Subsection 17946 (i)(3)(E) is deleted. The certification information specific to the source reduction option is now in proposed Subsections 17945.3 (d)(2) – (5).

Subsection 17946 (i)(3)(E)(1) The current Subsection 17946 (i)(3)(E)(1) is deleted and replaced by the information in proposed Subsections 17945.3 (d)(2)(B), (d)(3)(B), and (d)(4)(D).

Subsection 17946 (i)(3)(E)(2) The current Subsection 17946 (i)(3)(E)(2) is deleted and replaced by information in proposed Subsections 17945.3 (b)(4), (d)(2)(A), (d)(3)(A), (d)(4)(A), (d)(4)(B), and (d)(5)(B).

Subsection 17946 (i)(4) The current Subsection 17946 (i)(4) is deleted. The required product manufacturer compliance certification information is now outlined in proposed Subsection 17945.3.

Subsection 17946 (i)(5) The current Subsection 17946 (i)(5) is moved to proposed Subsection 17945.3(b)(3) and amended.

SECTION 17946.5. Documentation Requirements.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The current Section and section title are deleted. The first and second paragraphs in current Subsection 17946.5 are deleted. For clarity and ease of use the required content of product manufacturer certifications is now contained in proposed Section 17945.3 and the content of container manufacturer certifications is now in proposed Section 17945.4. Information on protecting proprietary information is now all in Section 17948.

The proposed Section 17946.5 title "**Exempt Rigid Plastic Packaging Containers**" is moved from the title of current Section 17944.5. This is a number change without regulatory effect.

The entire proposed Section and all its subsections are moved from Section 17944.5 and its subsections, or moved and amended. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17946.5 (a) The current Subsection is deleted. It is replaced, in part, by proposed Section 17945.3, Product Manufacturer Certification Information. The proposed Subsection 17946.5 (a) is moved from Subsection 17944.5 (a) and amended. The question is deleted. At 2007 meetings, stakeholders said the question and answer format of the regulations was confusing. The phrase “rigid plastic packaging” is added before the word “container” for clarity and consistent use of the term throughout the regulations. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17946.5 (a)(1) The current Subsection is moved to proposed Subsection 17945.5 (b) and amended. The proposed Subsection is moved from Subsection 17944.5 (a)(1) and amended. The initial use of the phrase “the state” is replaced with “California” for clarity and consistency throughout these regulations as much of the regulated community is based not in California. The term “upon” is replaced with “during” for clarity that the containers stay with the products during the shipment, not just at the time of shipment as the term “upon” might imply. The second and the third uses of “the state” are left as is because the Subsection defines what is meant using this term and is sufficiently clear given the initial use of the word “California.”

Subsection 17946.5 (a)(1)(A) The current Subsection is deleted. It is replaced, in part, by information contained in proposed Subsection 17945.4 (a)(3)(B) and (C).

Subsection 17946.5 (a)(1)(B) The current Subsection is moved to proposed Subsection 17945.5 (b) and amended.

Subsection 17946.5 (a)(1)(C) The current Subsection is deleted. The information required in product manufacturer certifications is now listed in proposed Section 17945.3.

Subsection 17946.5 (a)(2) The current Subsection is moved to proposed Subsection 17945.5 (d) and amended. The proposed Subsection 17946.5 (a)(2) is moved from Subsection 17944.5 (a)(2) and amended. The amendment simply shifts the term “medical devices” in the sentence to match the order in statute. This is done to clarify that no difference from statute is intended. The information is included in the regulations simply for ease of reference.

Subsection 17946.5 (a)(2)(A) The current Subsection is deleted. It is replaced by information contained in proposed Subsections 17945.3 (d)(2)(B), (d)(3)(B), and (d)(4)(D).

Subsection 17946.5 (a)(2)(B) The current Subsection is deleted. It is replaced by information contained in proposed Subsections 17945.3 (c)(4), (d)(2)(A), (d)(4)(A), (d)(4)(C), and (d)(5)(B).

Subsection 17946.5 (a)(2)(C) The current Subsection is moved to proposed Subsection 17945.5 (d) and amended.

Subsection 17946.5 (a)(2)(D) This current Subsection is deleted. The information required in product manufacturer certifications is now listed in proposed Section 17945.3.

Subsection 17946.5 (a)(3) The current Subsection is moved to proposed Subsection 17945.5 (e) and amended. The proposed Subsection 17946.5 (a)(3) is moved from Subsection 17944.5 (a)(3) and amended. The phrase “toxic or hazardous” is added so that the statement matches statute as no difference is intended. This information is included in the regulations simply for ease of reference.

Subsection 17946.5 (a)(3)(A) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(6)(D).

Subsection 17946.5 (a)(3)(B) The current Subsection is deleted. It is replaced by information contained in proposed Subsections 17945.3 (c)(3), (c)(4), (c)(6), and (d)(6)(B).

Subsection 17946.5 (a)(3)(B)(1) The current Subsection is deleted. It is replaced by information contained in proposed Subsections 17945.3 (c)(3) and (c)(4).

Subsection 17946.5 (a)(3)(B)(2) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(6)(B).

Subsection 17946.5 (a)(3)(B)(3) The current Subsection is moved to proposed Subsection 17945.5 (e)(3) and amended.

Subsection 17946.5 (a)(3)(C) The current Subsection is moved to proposed Subsections 17945.5 (e)(1) and (2) and amended.

Subsection 17946.5 (a)(3)(D) The current Subsection is deleted. The information required in product manufacturer certifications is now listed in proposed Section 17945.3, and the “note” about how RPPCs containing replacement products are to be addressed is moved to Subsection 17945.3 (d)(6).

Subsection 17946.5 (a)(4) The current Subsection is moved to proposed Subsection 17945.5 (f) and amended. The proposed Subsection 17946.5 (a)(4) is moved from Subsection 17944.5 (a)(4) and amended to include reference to Section 178.522 of Title 49 of the Code of Federal Regulations which sets federal standards for composite packaging with inner plastic receptacles as an additional testing standard that meets the exemption requirements of the proposed Subsection.

Subsection 17946.5 (a)(4)(A) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(7)(C).

Subsection 17946.5 (a)(4)(B) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (c)(6) and (d)(7).

Subsection 17946.5 (a)(4)(B)(1) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (c)(6).

Subsection 17946.5 (a)(4)(B)(2) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(7) regarding how many times original containers were refilled during the measurement period.

Subsection 17946.5 (a)(4)(C) The current Subsection is moved to proposed Subsections 17945.5 (f)(1) and (2) and amended.

[Subsections 17946.5 (a)(4)(D) and (E) do not exist in the current regulations.]

Subsection 17946.5 (a)(4)(F) The current Subsection is deleted. The information required in product manufacturer certifications is now listed in proposed Section 17945.3.

Subsection 17946.5 (a)(5) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(8).

Subsection 17946.5 (a)(5)(A) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(8)(A)(1) and (3).

Subsection 17946.5 (a)(5)(B) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(8)(A)(4).

Subsection 17946.5 (a)(5)(C) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(8)(A)(2).

Subsection 17946.5 (a)(5)(D) The current Subsection is deleted. The general information required in product manufacturer certifications is now listed in proposed Subsections 17945.3 (a), (b) and (c), and compliance data specific for those using the recycling rate option is in proposed Subsection 17945.3 (d)(8)(B).

Subsection 17946.5 (a)(5)(E) The current Subsection is deleted. The compliance threshold for the recycling rate option is contained in proposed Subsection 17944 (a)(2).

Subsection 17946.5 (a)(6) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(9)(A).

Subsection 17946.5 (a)(6)(A) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (d)(9)(A)(1)(a).

Subsection 17946.5 (a)(6)(B) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (c)(9)(A)(1)(b).

Subsection 17946.5 (a)(6)(C) The current Subsection is deleted. It is replaced by information contained in proposed Subsection 17945.3 (c)(9)(A)(1)(c).

Subsection 17946.5 (a)(7) The current Subsection is deleted. It is replaced by information contained in proposed Subsections 17945.2 (e) and (f).

Subsection 17946.5 (b) The current Subsection is deleted. The question and response are deleted. At 2007 meetings stakeholders said the question and answer format of the regulations was confusing. The compliance criteria for product manufacturers are stated in proposed Section 17944. The information product manufacturers must include in their certifications is in proposed Section 17945.3. As certifications are on a calendar year basis, the Department only needs reported the information particular to that measurement period, not changes in compliance options used since the prior certification.

The proposed Subsection 17946.5 (b) is added. It replaces information contained in current Subsection 17944.5 (b). In response to stakeholder comments during the rulemaking, requirements have been amended to clarify when and how a product manufacturer must notify the Department of its claim of exempt RPPCs. Since the exemptions are provided in statute

(PRC Section 42340), it is not necessary for product manufacturers to petition the Department for an exemption, but simply to report their claim so the Department can review it for compliance with statute. The proposed timeframe for submitting the report (within 90 calendar days after receiving a certification notice) corresponds with other such timelines in these regulations (e.g., for waivers) and allows the Department to review the claim to determine its validity and advise the requestor of any issues before the end of the certification period and before certifications are due.

Subsection 17946.5 (b)(1) The proposed Subsection is added. It replaces, in part, information contained in Subsection 17944.5 (b). It requires a product manufacturer that claims an exemption to submit photograph(s) of the RPPC(s) and label(s) which show the name(s) of the product(s) for which the exemption is being claimed. The Department needs this information to evaluate whether the container meets the definition of a RPPC and contains a product that is statutorily exempt per PRC Section 42340. As the label may not be directly on the container, photos of both may be required for clarity and completeness.

Subsection 17946.5 (b)(2) The proposed Subsection is added. It replaces, in part, information contained in Subsection 17944.5 (b). It requires a product manufacturer that claims an exemption to explain the basis for the exemption including reference to applicable federal laws and regulations, registration numbers, and other supporting documentation. In past certification cycles the Department spent considerable time researching exemptions because information submitted did not include the specific types of documentation listed in this Subsection. The proposed Subsection addresses product manufacturers' request for more clarity on what is required to document their exemption claims. The Department needs this information to evaluate whether the request meets the statutory exemptions allowed in PRC Section 42340.

Subsection 17946.5 (b)(3) The proposed Subsection is added. It replaces, in part, information contained in current Subsection 17944.5 (b). It requires the request for exemption include the contact information for the person to whom the Department should direct any questions and its response. The Subsection also requires that the documentation be submitted under penalty of perjury and specifies the format. The contact information is needed so the Department can communicate with the appropriate party. The signature ensures the request is signed by an authorized representative of the company, and the format is consistent with information required to be submitted by companies elsewhere in this program and for other Department programs, such as the At Store Recycling Program, and local government reports to the Department.

Subsection 17946.5 (c) The Subsection is deleted. The question and response are deleted. At 2007 meetings stakeholders said the question and answer format of the regulations was confusing. The information required in product manufacturer certifications is now listed in proposed Section 17945.3.

Subsection 17946.5 (d) The Subsection is deleted. The question and response are deleted. At 2007 meetings stakeholders said the question and answer format of the regulations was confusing. The information on records retention requirements is now contained in proposed Section 17948.1.

SECTION 17947 Auditing.**SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION**

The current Section is amended. In the past, Department audits of certifications have been the subject of controversy because per the current Section they rely solely on the evaluation of information provided by the product manufacturer. Some product manufacturers say that other product manufacturers withhold key information from the Department that is essential for making an accurate determination of compliance. Other interested parties have expressed concerns that the auditing requirements do not follow standard auditing procedures and protocols which could limit the overall effectiveness of the law. Changes in the subsections address these concerns.

Subsection 17947 (a) The Subsection is amended. The question is deleted because at 2007 meetings stakeholders said the question and answer format of the regulations was confusing.

In the first and second sentences the term "Board" is replaced by "Department, or its agent," as the Department succeeded the Board January 1, 2010 and to clarify that the Department may designate an agent (e.g., another party with auditing expertise) to conduct audits. Allowing use of an agent also helps to address concerns that the program audits do not follow standard auditing procedures and protocols which could be limit overall effectiveness of the law.

In the first sentence the word "your" is deleted and replaced with the phrase "product manufacturer compliance" for greater clarity as to who and what is being audited and to be grammatically correct since the question and answer format is deleted. In the second sentence the word "you" is deleted for the same reason. The Sections describing supporting documentation for compliance certifications are updated to reflect the numbering changes in the regulations and correctly identify where the requirements are now located.

Subsection 17947 (b) The Subsection is amended. The question is deleted because at 2007 meetings stakeholders said the question and answer format of the regulations was confusing.

In the first sentence the phrase "the information" is deleted and replaced with the term "documentation." This is consistent with the use of the term "documentation" throughout proposed Sections 17945.2 and 17945.3. The word "Board" is replaced with "Department, or its agent," as the Department succeeded the Board January 1, 2010 and to clarify that the Department may designate an agent to conduct audits. The phrase "will mail" is deleted and replaced with the phrase "shall send" to be consistent with the definition of "'must" or "shall"' in proposed Subsection 17943 (l) and in anticipation of more electronic communication in the future. The word "written" has been added to clarify that the Department will send a written, not an oral, request. The words "to you" are deleted for grammatical correctness since the question about "my" certification is deleted.

The second and third sentences are combined to simplify the statement. The words "Board will list the information it needs and explain why the Board needs the information. You will" are deleted. The product manufacturer certification requirements are now specified in detail in proposed Subsections 17945.2 and 17945.3, and the prior sentence in this Subsection already requires the request be in writing. The phrase "recipient of a request for documentation, shall" is added to replace the deleted phrase and clarify that the party receiving the request for documentation is responsible for submitting a response within 60 calendar days. The word

“calendar” is added before days for clarity and consistency throughout these regulations as to the timeline involved. The phrase "postmarked date of receipt" is replaced with “confirmed date of delivery” for clarity as in the future the Department may send a written request either by mail or electronically. The words "on" and "Board's" are deleted because they are no longer grammatically correct with the change of the subject of the sentence to "the recipient." The term “information” at the end of this proposed sentence is replaced with “documentation” for consistency with the terminology already used in this Subsection.

Subsection 17947 (c) The current Subsection is deleted. The current Subsection states that an audit will be conducted based only on information a product manufacturer provides. Some product manufacturers say that other product manufacturers withhold key information from the Department that is essential to make an accurate determination of compliance. Eliminating this requirement to use only information provided by the product manufacturer addresses this concern.

The proposed Subsection (c) is moved from Subsection 17947 (d) and amended. The question is deleted as stakeholders found the question and answer format confusing. Additional amendments of this proposed Subsection eliminate unnecessary redundancy and make the grammar consistent with removal of the question and answer format. The phrase “subject to the fines” is replaced by “result in violations” to use the same terminology (“violations and penalties”) as used in Section 17949.

Subsection 17947 (d) The Subsection is moved to proposed Subsection 17947 (c) and amended.

SECTION 17948 Proprietary, Confidential, or Trade Secret Information.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The current Section is amended. The phrase "Confidential, or Trade Secret" has been added to the title of the proposed section more clearly and completely summarize the topics covered in the proposed Section.

Product and container manufacturers have, on numerous occasions, said that the current Section does not adequately address their concerns that data supplied to the Department in a compliance certification will be kept confidential. Product and container manufacturers say if their reported information is disclosed, it can be used by competitors and put the manufacturers submitting the information at a severe economic disadvantage. Additionally, the current Section is not consistent with the requirements in Title 14, California Code of Regulations (14 CCR) Section 17041 et seq. related to the disclosure of all solid waste program-related confidential information collected by the Department. Therefore the entire current Section (with all its subsections) is deleted and replaced with a brief statement referencing the regulations that govern disclosure of records for all the Department’s activities. This proposed language will ensure that confidential information requirements apply uniformly to all Department solid waste programs.

Subsection 17948 (a) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department’s solid waste programs.

Subsection 17948 (a)(1) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(1)(A) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to the Department's solid waste programs.

Subsection 17948 (a)(1)(B) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(1)(C) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1)(a) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1)(b) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1)(c) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1)(d) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1)(e) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(1)(f) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(A)(2) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(B) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(2)(C) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(3) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(3)(A) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(3)(B) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

Subsection 17948 (a)(4) The current Subsection is deleted. It is replaced by proposed Section 17948 to reference the existing regulations about confidential documents that apply to all the Department's solid waste programs.

SECTION 17948.1 Retention of Records.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The proposed Section is added. It replaces, in part, information contained in current Subsection 17946.5 (d) and clarifies the timeframes for records retention by both product and container manufacturers.

Subsection 17948.1 (a) The proposed Subsection is added. It replaces information contained in current Subsection 17946.5 (d). Records need to be retained so they are available if and when the Department audits a product manufacturer's compliance certification. The number of years a product manufacturer is required to retain the records related to a compliance certification for any option other than the source reduction compliance option is changed from four years in current Subsection 17946.5 (d) to three years in this proposed Subsection. A three-year records retention period is consistent with requirements for other types of solid waste program records retention. Department audits of a given certification cycle will normally be

started within three years after that compliance certification is submitted, so the proposed language ensures records will be available for an audit.

Subsection 17948.1 (b) The proposed Subsection is added. It replaces information contained in current Subsection 17946.5 (d). Records need to be retained so they are available if and when the Department audits a product manufacturer's compliance certification. In past certification cycles, a product manufacturer that submitted a source reduction compliance certification often could not supply records for the non-sourced reduced containers when the source reduction had occurred many years in the past. The proposed section clarifies that records for source reduction compliance certifications need to be kept as long as that source reduction is claimed as the basis for compliance, and for at least three years thereafter. This addresses the prior problem of missing records and also makes the timeline ("three years thereafter") consistent with records retention for other compliance options. Department audits of a given certification will normally be started within three years after that compliance certification is submitted, so the proposed language ensures records will be available for an audit.

Subsection 17948.1 (c) The proposed Subsection is added. It replaces information in current Subsection 17946.5 (a)(1)(A) and clarifies records retention requirements for container manufacturers. While container manufacturers provide certifications to product manufacturers, not directly to the Department, their supporting documentation should also be maintained and available to product manufacturers for at least three years following the measurement period for which the information is reported. This will allow product manufacturers access to supporting documentation for their certifications if needed (e.g., to respond to a Department audit request).

SECTION 17948.2 Advisory Opinions.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The proposed Section is added. It replaces current Subsection 17943 (b)(30)(E), regarding when and how the Department will make determinations as to whether a specific container meets the definition of an RPPC, and provides a procedure for such determinations early in the certification process. It also addresses stakeholder questions and concerns about when such determinations will be allowed.

Historically, product manufacturers and container manufacturers routinely requested such determinations and the Department processed them on a case-by-case basis as required in the current regulations. However, there are thousands of known product manufacturers subject to this program and many of them have multiple products packaged within RPPCs. Container manufacturers are not directly responsible for meeting the requirements of the law. The Department does not have the staff resources to determine whether a specific container must meet the RPPC requirements any time a product manufacturer requests a determination.

Stakeholders requested that the revised regulations provide a process for obtaining advisory opinions. Since the product manufacturers are responsible for compliance with the law, this section does not include advisory opinions for container manufacturers. The proposed Section limits product manufacturer requests for such advisory opinions to the pre-certification and certification processes to help ensure the number of requests received by the Department is manageable, and the requests are relevant, to the pending certification cycle. This proposed Section outlines the process for seeking advisory opinions.

Subsection 17948.2 (a) The proposed Subsection is added. It allows a product manufacturer selected for pre-certification pursuant to Section 17945.1(b) or certification pursuant to Section 1945.1 (d)(3) to request the Department provide written advice with respect to the manufacturer's compliance with this program. Limiting the requests to those selected for a pending certification cycle will help ensure the Department can respond in a timely manner and that the request itself is relevant to the pending certification cycle. The request is to be submitted to the Director via the Department's legal office as that is a central, non-changing point of contact by which to reach the applicable program management in a timely manner.

Subsection 17948.2 (b) The proposed Subsection is added to clarify that only product manufacturers selected and notified of pre-certification or of certification will be provided written advice. There are thousands of product manufacturers and many of them have a variety of products packaged within RPPCs. The Department does not have enough staff resources to determine whether a particular product packaging container must meet the RPPC requirements every time a product manufacturer requests a determination. This proposed Subsection reiterates that only product manufacturers notified during the pre-certification or certification process that they may or will be required to certify compliance can request an advisory opinion. Limiting product manufacturer requests for advisory opinions to the limited number of (e.g., few hundred) companies notified in these cycles ensures the number of requests received by the Department is manageable for a given cycle and the requests are relevant to the pending certification cycle.

Subsection 17948.2 (c) The proposed Subsection is added. It requires the product manufacturer submit its request for advice within 90 calendar days of its receipt of a pre-certification or certification notice and that the request be in writing. The pre-certification process specifies that product manufacturers will be notified by January 31 of the year preceding the measurement period that they may be required to certify compliance for that measurement period (proposed Subsection 17945.1 (b)(1)). The certification process specifies that product manufacturers will be notified by March 31 of the measurement period that they will be required to certify compliance for that period (proposed Subsection 17945.1 (d)(2)). A 90 calendar-day timeframe allows the product manufacturer time to identify its questions, while still allowing time for the Department to review and respond to the request before a certification is due. It is also consistent with other timeframes in the regulations. The limitation to written requests helps control the incoming workload to the Department and helps prevent lost requests as well as excessive numbers of requests.

Subsection 17948.2 (c)(1) The proposed Subsection is added. It requires the product manufacturer to provide its contact information so the Department can direct any follow-up questions and its response to the appropriate party. This is consistent with contact information requested for the product manufacturer identification and pre-certification process in Subsection 17945.1 (a).

Subsection 17948.2 (c)(2) The proposed Subsection is added. The Department must have sufficient, relevant information to evaluate the request for an advisory opinion so this Subsection requires the product manufacturer to provide the facts material to the question presented, including studies or physical examples where appropriate. This addresses historical problems of the Department receiving inadequate information to make a determination. Additionally, the reference to physical examples (e.g., a container or photo of a container) is added since a written description of a container may not provide the Department with enough information to

make a decision as to whether that container meets the definition of a RPPC. The proposed Subsection provides the Department with the container information needed for the Department to complete its analysis and address the question(s) raised by the product manufacturer.

Subsection 17948.2 (d) The proposed Subsection is added. It specifies that if the request for an advisory opinion is not submitted within the stated timeframes by the noticed product manufacturers, and if the request does not include the necessary contact information and facts material to the consideration of the request, the Department will notify the requestor of that in writing. This reduces Department staff work on tracking incomplete or inappropriate requests for advisory opinions and eliminates the historical problem of issuing formal advisory opinions stating that the Department did not receive sufficient information to issue an advisory opinion.

Subsection 17948.2 (e) The proposed Subsection is added to specify that the Department has 90 calendar days to respond to complete advisory requests. This provides product manufacturers with an opinion by the end of the third quarter of the measurement period (at the latest), so that they still have time to make changes if needed to include all regulated containers in their certification. This timeframe will also allow the Department to manage workload so that staff work on advisory opinions for a given certification cycle is completed before evaluation of compliance certifications for that cycle begins. The 90-day timeframe is consistent with other such timeframes in these regulations.

SECTION 17948.5 Letters of Non-Objection.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The Section has been deleted. The title is amended to replace the symbol "§" with the word "Section" consistent with the format used throughout the proposed regulations. The title remains in the California Code of Regulations as the history is shown there.

SECTION 17949 Violations and Penalties.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

The current Section is amended. Product manufacturers that were assessed penalties in past certification cycles said that the current methodology for calculating the penalty amount is confusing, and they did not understand how the Department used the current penalty tables to determine the degree of noncompliance. Additionally, product manufacturers expressed concerns that their reliance on container manufacturers' certifications that turned out to be inaccurate could subject the product manufacturers, but not the container manufacturers, to penalties.

The proposed amendments to the Section address these concerns by clarifying: that container manufacturers that submit certifications to a product manufacturer with false or misleading information are subject to the same penalties and fines as those imposed on product manufacturers; that product manufacturers will not be penalized for false or misleading information they receive from a container manufacturer; and to clearly show the formulas used to determine the degree of noncompliance and applicable penalties.

Subsection 17949 (a) The current Subsection is amended. The question is deleted because at 2007 meetings stakeholders said the question and answer format of the regulations was confusing. In the first sentence the word "Section" is added for consistency with the format used throughout the proposed regulations. The statutory reference is corrected from PRC Section 42322 to 42321 because 42322 refers to the penalty amount while 42321 is the section that gives the Department authority to refer providers of false and misleading information in a compliance certification to the Attorney General. The word "calendar" is added before days for clarity of timeframes and as used throughout the regulations. The phrase "Board having made a determination" is replaced with the phrase "Department determining" and the word "certificate" is replaced with the words "compliance certification" for clarity and consistent use of terminology throughout the proposed regulations. The term "Board" is replaced by "Department" in two additional places as the Department succeeded the Board January 1, 2010. The word "shall" is deleted and replaced with the word "may" to indicate that referral to the Attorney General is permissive, not mandatory.

Subsection 17949 (b) The current Subsection is moved to proposed Subsection 17949 (c) and amended. The proposed Subsection 17949 (b) is added to describe the penalties and fines to which a container manufacturer may be subject if it is found to have provided false or misleading information to a product manufacturer, and to clarify that a product manufacturer is not subject to fines or penalties if its non-compliance was the result of relying on false or misleading information from a container manufacturer. This addresses product manufacturers' concerns that they are often dependent on container manufacturers' certifications to determine compliance, and that under the current regulations they (but not the container manufacturers) may be penalized for this. This proposed Section clarifies that container manufacturers, as well as product manufacturers, are subject to penalties for providing false and misleading information, and is consistent with PRC Sections 42321.5 (a) and (b).

Subsection 17949 (c) The current Subsection is moved to proposed Subsection 17949 (d) and amended. The proposed Subsection (c) is moved from 17949 (b) and amended. The question is deleted because at 2007 meetings, stakeholders said the question and answer format of the regulations was confusing. Additional amendments have been made to make the proposed Subsection consistent with amendments made to PRC Section 42322 (d). The words "of this Article" have been added to clarify that the violation referred to is related to this Article regarding RPPC requirements. The parenthetical phrase "(i.e., calendar year certification cycle)" is added to clarify that the penalty limit "per annum" means per measurement period (as implied in the subsequent sentence). The words "Annually, on and after July 1, 1996," are deleted and replaced with "On or before July 1st of each year" to eliminate the obsolete reference point of 1996. The word "Board" is replaced by "Department" as the Department succeeded the Board January 1, 2010. Finally, the phrase, "of all violators of these requirements and the amount of the fines they were assessed" is deleted and replaced with "setting forth any fines or penalties that have been levied against a violator of this Article in the preceding calendar year for failure to comply with the requirements of this Article." This clarifies that the Department-published list will be organized by calendar year and published for fines levied in the preceding calendar year, as the certification cycles (measurement periods) are by calendar year. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations.

Subsection 17949 (d) The current Subsection (d) is deleted. The current Subsection describes the Department's method of determining the degree of non-compliance using a point system accounting for each container line and using average weighting for calculating penalties. The

current table in the Subsection caps compliance points for the source reduction and postconsumer content compliance options and rounds up to a single decimal place. These caps and the single decimal point values in the current table make the calculated penalties less accurate, particularly when large numbers of containers are involved and the rounding makes a significant difference. To address these issues, this Subsection is replaced with a standard set of formulas and a penalty weighing system in proposed Subsection 17949 (e).

Proposed Subsection (d) is moved from Subsection 17949 (c) and amended. The question is deleted and the grammar of the answer corrected accordingly. At 2007 meetings, stakeholders said the question and answer format of the regulations is confusing. The violation and penalty table in the proposed Subsection is also amended to correct the references and clarify terminology where needed. During the formal rulemaking process, product manufacturers were concerned about receiving notice prior to the certification due date to avoid fine and penalty assessments. The Department routinely sends reminder notices as part of its standard business practices, and penalty notices and reminder notices are sent as part of the Department's standard accounting process.

In row 1, column 2 of the chart, the words "rigid plastic packaging" are added before the word "container" for clarity and consistent use of the term throughout the regulations. In addition, the phrase "in accordance with Sections 17945.3 and 17945.5 of this Article" is added to clarify that product manufacturer RPPC requirements are found in these proposed sections. In row 1, column 3, the section reference is updated to reflect the new location of the penalty details for noncompliance and for consistent terminology (i.e., use of "Section") throughout the regulations.

In row 2, column 1 of the chart, the section number "17946" is deleted and replaced by the proposed Section "17945.2" which now contains the certification timeline information currently in Section 17946. In row 2, column 3, the section number is updated to reflect the new location of the detail of penalties for late submittals.

In row 3, column 1 of the chart, the number "17946" is deleted. It is replaced with the Section numbers "17945.2; 17945.3" to correctly refer to the proposed location of information on the compliance certification process (17945.2) and content (17945.3), moved from current Section 17946. In row 3, column 2, the word "from" is deleted and replaced with the word "between" to be grammatically correct, and punctuation changes are made for clarity. In row 3, column 3, the section number is added for consistency with the rest of the chart and clarity on where the detail of penalties for inaccuracy or incompleteness is located.

In row 4, column 1, the Section number "17946" is deleted. It is replaced with the Section numbers "17945.2; 17945.3; 17945.4" to accurately show the proposed new locations of the information on the compliance certification process and certification content for both product and container manufacturers. In row 4, column 2, the phrase "or container manufacturer" is added to clarify that container manufacturers are also subject to penalties for providing false or misleading information in a certification. As noted above, this addresses product manufacturers' concerns that under the current regulations they (but not container manufacturers) can be penalized for relying on a container manufacturer's information that was later found to be false or misleading. In row 4, column 3, the word "calendar" is added before "days for clarity and consistency throughout these regulations, and the term "Board" replaced by "Department" as the Department succeeded the Board January 1, 2010.

Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed regulations,

Subsection 17949 (e) The current Subsection is moved to proposed Subsection 17949 (f) and amended. The proposed Subsection (e) is added to clearly describe the process of how penalties for product manufacturer noncompliance will be calculated based on the information in their certifications and the specified formulas. The process will consistently give credit for progress in meeting compliance goals by basing the total penalty on a weighted average of the product manufacturer's degree of compliance by container line. This addresses product manufacturers' concern that their efforts to comply were not clearly being taken into account under the "degree of noncompliance system" in current Subsection 17949 (d). For clarity and completeness, the proposed Section also adds formulas for compliance options not previously included here: the alternative container, recycling rate, and floral industry options.

All of the proposed formulas work as follows and can be used for a single line or for multiple lines claiming the specified compliance option. This allows product manufacturers to estimate their own penalties and know how the Department will calculate the penalties based on data in the final approved certification. In each case, the formulas take the weight of the product manufacturer's RPPCs for the line(s) using that compliance option and divide that sum by the total weight of RPPCs for all the product manufacturer's lines. This gives the relative contribution of the weight of the container line in review to the product manufacturer's total container weight. This means if the container line is a small proportion of the product manufacturer's total container weight, the proportion of the total penalty attributed to that container line will be relatively small.

Then, secondly, the formulas determine the noncompliance penalty amount, from a minimum of \$5,000 to a maximum of \$50,000 as specified in the Table in proposed Section 17949 (d). The product manufacturer's calculated compliance for the line(s) claiming this option (from the reviewed and approved certification) is multiplied by the factor needed to get 25 (the compliance threshold for the postconsumer material option, used as a baseline). This is then multiplied by \$2,000 for lines in compliance, or \$1,800 for lines out of compliance, and the result subtracted from \$50,000.

Thirdly, this resulting dollar amount is multiplied by the previously calculated weighted average for the line(s) claiming that compliance option to determine the penalty (if any) due. This works mathematically so that for lines that meet the threshold compliance (e.g., 25 percent in the case of the postconsumer content option, 10 percent for source reduction), the result will be \$0 or less, and for lines that have not met the compliance threshold, the result will be at least \$5,000. Finally, all the various container lines' penalties are summed to get the net amount due (or \$0 if sums to less than zero). The following subsections specify the formulas to use for each particular compliance option.

Subsection 17949 (e)(1) This proposed Subsection is added to provide a formula to consistently calculate penalties for container lines claiming compliance under the postconsumer material or alternative container compliance methods. These two methods can use one formula as they both have a threshold of compliance of 25 percent (i.e., the RPPC or plastic packaging and/or product line must use 25% postconsumer material content to be compliant). The introductory statement explains the options for which the following formula is to be used, and then the formula is presented and immediately followed by the definitions of the symbols consistent with how the formulas in proposed Section 17945.5 are presented.

Subsection 17949 (e)(2) This proposed Subsection is added to provide a formula to consistently calculate penalties for container lines claiming compliance under any of the source reduction options (e.g., container weight reduction, product concentration). In this formula the calculated compliance is multiplied by a factor of 2.5 to achieve the baseline of 25 as the threshold for compliance for source reduction is 10 percent. The introductory statement explains the options for which the following formula is to be used, and then the formula is presented and immediately followed by the definitions of the symbols.

Subsection 17949 (e)(3) This proposed Subsection is added to provide a formula to consistently calculate penalties for container lines claiming compliance under either the reusable or refillable container options. These two methods can use the same formula as they both have a threshold of compliance of 5.00. In this formula the calculated compliance is multiplied by a factor of 5 to achieve the baseline of 25. The introductory statement explains the options for which the following formula is to be used, and then the formula is presented and immediately followed by the definitions of the symbols.

Subsection 17949 (e)(4) This proposed subsection is added to clearly show how the Department will calculate penalties for container lines claiming compliance under the recycling rate option. In this formula the calculated compliance is multiplied by a factor of 0.555556 to achieve the baseline of 25 used in the formula as the threshold for compliance is 45 percent. The introductory statement explains the options for which the following formula is to be used, and then the formula is presented and immediately followed by the definitions of the symbols.

Subsection 17949 (e)(5) This proposed subsection is added to clearly show how the Department will calculate penalties for container lines claiming compliance under the floral industry option. In this formula the calculated compliance is multiplied by a factor of 1.0416667 to achieve the baseline of 25 as the threshold for compliance is 24 months. The introductory statement explains the options for which the following formula is to be used, and then the formula is presented and immediately followed by the definitions of the symbols.

Subsection 17949 (e)(6) This proposed subsection is added to explain how the weighted penalties by container line(s) are summed to determine the total penalty due. This weighting and summation process addresses product manufacturers' concerns that they get credit for their efforts toward compliance. The proposed "Sample Table" also shows how the weight of RPPCs for a product manufacturer is calculated for use in the formulas, as well as how the net penalty is determined. This makes the penalty calculation process clearer than as described in current Subsection 17949 (d).

Subsection 17949 (f) The current Subsection is moved to proposed Subsection 17949 (h) and amended. The proposed Subsection 17949 (f) is moved from current Subsection 17949 (e) and amended. The question is deleted because at 2007 meetings, stakeholders said the question and answer format of the regulations was confusing. The word "will" is deleted and replaced by "shall" consistent with the definition of "must or shall" in proposed Subsection 17943 (l) and its use throughout the regulations.

Subsection 17949 (g) The proposed Subsection is added to detail the determination of specific penalty amounts for incomplete and/or inaccurate compliance certifications. In the current regulations, the range of potential penalties is specified in row 3 of the Table in 17949 (c) to be \$1,000 to \$50,000 but no information is provided as to how specific amounts will be determined. To address product manufacturer concerns about transparency in the penalty process, and for

consistency with the detail provided for the other violations (such as in Subsections 17949 (e) and (f)), this Subsection is added. The introductory statement describes what this Subsection covers.

Subsection 17949 (g)(1) This proposed Subsection is added to show the range of penalties for incomplete and/or inaccurate certifications based on the degree and significance of such incompleteness or inaccuracy. A table format is used consistent with that in current Subsection (e) (proposed Subsection (f)).

Subsection 17949 (g)(2) This proposed Subsection is added to give examples of how the Department will evaluate the significance and degree of incompleteness and inaccuracy. This addresses stakeholder concerns about lack of transparency in the penalty assessment process.

Subsection 17949 (g)(2)(A) This proposed Subsection is added to describe how the Department will determine if the degree of incompleteness or inaccuracy is major or minor depending on the amount of information missing or inaccurately stated relative to what's required on the product manufacturer's certification per proposed Section 17945.3 and the calculations of compliance per proposed Section 17945.5.

Subsection 17949 (g)(2)(B) This proposed Subsection is added to describe how the Department will determine the level of significance depending on the extent to which the Department can follow and verify the product manufacturer's determination of compliance.

Subsection 17949 (g)(2)(C) This proposed Subsection is added to give an example of how the Department might make such determinations as noted in Subsections (A) and (B). This is to disclose the process as clearly as possible to the product manufacturers, while still recognizing there will be cases we have not yet considered (thus the use of the indefinite terms "would likely").

Subsection 17949 (h) The proposed Subsection is moved from current Subsection 17949 (f) and amended. The question is deleted because at 2007 meetings, stakeholders said the question and answer format of the regulations was confusing. The answer is rephrased to correct the grammar pursuant to deleting the question format. The word "Board" is replaced by "Department" as the Department succeeded the Board January 1, 2010. Additionally, the phrase "factors in modifying or reducing penalties for violations, such as," is added. With the deletion of the question, this phrase is needed to include the primary purpose of the Subsection in the remaining text. The word "considering" is deleted to make the sentence grammatically correct. The phrase "as provided by the product manufacturer" is deleted. Other parties, including Department staff, may have evidence related to the factors that the Administrative Law Judge or the Department decision maker may also need or choose to consider. During the formal rulemaking process, product manufacturers requested the regulations not limit the authority of an Administrative Law Judge to modify or reduce any fine or penalty. The proposed regulations do not impair or expand upon any authority an Administrative Law Judge may already have to deviate from statutorily-based fines or penalties, but the Department will not expressly or impliedly expand upon the authority of an Administrative Law Judge over the Department in these matters.

Subsection 17949 (h)(1) The proposed Subsection is moved from current Subsection 17949 (f)(1) and amended. The phrase "in California" is added to clarify that when looking at mitigating factors for penalty reduction, the focus is on California diversion and sustainable markets, not

national or worldwide markets, as RPPC requirements only apply within California, not elsewhere. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed Section.

Subsection 17949 (h)(2) The proposed Subsection is moved from current Subsection 17949 (f)(2) and amended. The phrase “of company” is deleted and replaced with the phrase “of the product manufacturer.” The current Subsection is unclear whether it is the size of the product manufacturer or the container manufacturer that will be considered. The product manufacturer is responsible for complying, so its size may be a factor relevant to modifying or reducing penalties for violations. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed Section.

Subsection 17949 (h)(3) Current Subsection 17949 (f)(3) is deleted. It is replaced by the addition of Subsection 17949 (b), which says that a product manufacturer shall not be subject to any fine or penalty for not complying as a result of submittal of false or misleading information by a container manufacturer. The proposed Subsection is moved from current Subsection 17949 (f)(4) and amended. Only grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed Section.

Subsection 17949 (h)(4) The proposed Subsection is moved from Subsection 17949 (f)(5) and amended. The phrase “Good faith efforts to comply with this Article, including” is added. This addition clarifies that the Administrative Law Judge or the Department may consider good faith efforts made by the product manufacturer, not just whether the product manufacturer was in full compliance, when determining penalties. Stakeholders said complying with the revised regulations will be costly and take time. This provision allows product manufacturers to provide evidence of making a “good faith effort” prior to the Department assessing a penalty. “Good faith effort” has been used for many years when considering penalties in other Department programs, including city and county requirements to plan and implement diversion programs to achieve 50 percent diversion. Grammatical and/or punctuation amendments have been made to be consistent with the format used throughout the proposed Section.

Subsection 17949 (h)(5) This proposed Subsection is added to include for consideration “The economic advantage of not complying with this Article.” One of the primary benefits to a product manufacturer of not complying with the RPPC requirements is that they gain an economic advantage over competitors by not incurring compliance costs. This proposed Subsection clarifies that the Administrative Law Judge or the Department may consider the economic advantage gained by a product manufacturer not complying with the regulations when considering whether to modify or reduce penalties for violations.