

TITLE 14. NATURAL RESOURCES
DIVISION 7. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
CHAPTER 4. RESOURCE CONSERVATION PROGRAMS
ARTICLE 3. RIGID PLASTIC PACKAGING CONTAINER REGULATIONS

Section 17942. Regulatory Effect of Questions and Answers; Effective Dates.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Section 42300 et seq., Public Resources Code.

Section 17943. Definitions.

The following definitions, as well as the definitions found in Public Resources Code Sections 42300-42345, apply to the regulations in this Article.

- (a) "Calendar Year" means a year beginning January 1 and ending December 31.
- (b) "Concentrated Product" means a product which has been intensified, or made denser or stronger, to achieve more uses per unit.
- (c) "Container Line" means a group of rigid plastic packaging containers manufactured with identical plastic resin(s), layers, style, shape, volume and weight.
- (d) "Container Manufacturer" means a company or a successor company that manufactures and sells any rigid plastic packaging container subject to this Article to a product manufacturer that sells or offers for sale in California any product held in that container.
- (e) "Curbside Collection Program" means a recycling program that collects materials set out by households for collection at the curb at intervals not less than every two weeks. "Curbside collection program" does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.
- (f) "Department" means the California Department of Resources Recycling and Recovery.
- (g) "Director" means the Director of the Department of Resources Recycling and Recovery.
- (h) "Final End User" means the person or entity that removes the product from the rigid plastic packaging container and discards or recycles the rigid plastic packaging container.
- (i) "Material Type" for purposes of this Article means feedstock categories, such as, but not limited to, paper, glass, aluminum and individual plastic resins.

(j) "May" means a provision is permissive.

(k) "Measurement Period" means the calendar year for which compliance is being determined as part of the certification or auditing process described in Sections 17945.1, 17945.2, 17945.3, 17945.5, 17947, and 17948.1 of this Article. For products introduced for sale in California after January 1 of a measurement period, their first measurement period shall be the remainder of that calendar year.

(l) "Must" or "Shall" means a provision is mandatory.

(m) "Newly Introduced Product" means any product held in a rigid plastic packaging container that is first sold or offered for sale in California after January 1, 1995. Products for which such claims as "new" or "improved" are made and products for which the rigid plastic packaging container has been changed by such criteria as size, color, or labeling, are not "newly introduced" packages or products.

(n) "Non-Source Reduced Container" means a rigid plastic packaging container that is not considered source-reduced under the criteria established for this program as found in Sections 17943 (af) and 17945.3 (d)(2) – (5) of this Article.

(o) "Original Rigid Plastic Packaging Container" means a rigid plastic packaging container that is holding a product when initially sold to the final end user and which may later be reused or refilled, as stated in Section 17945.3 (d)(6) and (d)(7) of this Article.

(p) "Particular Type Rigid Plastic Packaging Container" means a rigid plastic packaging container which holds a single type of generic product, such as all purpose cleaner or detergent.

(q) "Postconsumer Material (PCM)" means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle.

(1) Rigid plastic packaging containers holding obsolete or unsold products that are commonly disposed, and not commonly reused within an original manufacturing process, shall be considered postconsumer material when used as feedstock for new rigid plastic packaging containers or under the alternative compliance method in Section 17944.1.

(2) Finished plastic packaging that has been rejected by a container or product manufacturer, and that is commonly disposed, may be considered postconsumer material if it is later used in a process other than the original manufacturing and fabrication process.

(3) Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(r) "Product Associated Rigid Plastic Packaging Container" means a brand-specific rigid plastic packaging container that may have one or more sizes, shapes or designs and that is used in conjunction with a particular generic product line. A product associated rigid plastic packaging container holds a brand-specific product such as Brand "X" liquid hand soap or Brand "Y" automotive oil.

(s) "Product Line" means a family of related products. Products within a line may be: 1) the same type of product, 2) sold to the same type of customer, and/or 3) sold through similar outlets. A product line may include more than one container line.

(t) "Product Manufacturer" means any person, partnership, association, corporation or any other entity that, through its own action or through contract or control, is primarily responsible for causing a product to be produced that is held inside of a rigid plastic packaging container and sold or offered for sale in California.

(1) The Department shall consider the following factors in identifying a product manufacturer:

(A) The ownership of the brand name of the product in the rigid plastic packaging container;

(B) Primary control or influence over the design of the product in the rigid plastic packaging container; and

(C) Primary control or influence over the design specifications of the rigid plastic packaging container.

(2) 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.

(u) "Product Sub-Line" means a group of related products within a product line. Product sub-lines may vary from one another due to factors such as container size, fragrance, or level of concentration. A product sub-line may include more than one container line.

(v) "Recycled" means a product or material that has been diverted from disposal and has been reused in the production of another product.

(w) "Recycling Rate" means the proportion (as measured by weight, volume or number) of one of the following types of containers sold or offered for sale in California and being recycled in a given calendar year:

(1) Particular type rigid plastic packaging containers.

(2) Product-associated rigid plastic packaging containers.

(3) Single resin specific rigid plastic packaging containers as defined in Public Resources Code Section 42301(i)(3).

(x) "Refillable Rigid Plastic Packaging Container" means a rigid plastic packaging container that is routinely returned to and refilled by the product manufacturer or its agent at least five times to replenish the contents of the original rigid plastic packaging container.

(y) "Replacement Product" 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.

(z) "Reusable Rigid Plastic Packaging Container" 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.

(aa) "Rigid Plastic Packaging Container (RPPC)" means any plastic packaging container having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in California.

(1) Rigid plastic packaging containers are capable of at least one closure (including but not limited to closure occurring during the production or manufacturing process), are sold holding a product, and are composed entirely of plastic except that rigid plastic packaging containers may have:

(A) Caps, lids, labels, handles, hinges, and other incidental packaging elements made of non-plastic material; and

(B) Additives such as pigments, colorants, fillers, and stabilizers that are part of the plastic polymer compound.

(2) Plastic caps, lids, handles, and hinges may be included as part of a rigid plastic packaging container at a product manufacturer's discretion.

(3) A plastic packaging container shall be considered to have a "relatively inflexible or finite shape or form" if:

(A) It has essentially the same shape empty as full. A plastic packaging container may be considered to have the same shape empty as full even if it is designed to be folded

or collapsed into a more compact form when not holding a product, such as, but not limited to, collapsible acetate boxes or tubes; and

(B) It is not flexible plastic packaging composed entirely of film plastic as defined by the American Society for Testing and Materials (ASTM) D6988.8 Guidelines for film plastic. Examples include, but are not limited to, grocery and merchandise carryout bags, pouches, or bubble, shrink, or stretch wrap.

(4) The capacity of a rigid plastic packaging container shall be determined as follows:

(A) For those containers measured in liquid or fluid volume, such as fluid ounce, gallon, milliliter, or liter, the product manufacturer may use either the labeled fluid volume or the equivalent volume. The metric equivalent for the following U.S. liquid measures is as follows: eight (8) fluid ounces is equivalent to 236.5882365 milliliters, and five (5) gallons is equivalent to 18.92705892 liters.

(B) Containers for products which are labeled and sold by weight or an item count must be measured for their equivalent volume.

(ab) "Signature" or "Signed" means either of the following:

(1) An original handwritten signature; or

(2) An electronic signature. An electronic signature includes an electronic sound, symbol, or process attached to or logically associated with an electronic record, executed or adopted by a party with the intent to represent an original handwritten signature. An electronic signature:

(A) Shall consist of a unique username and password or other security measures as required by the Department;

(B) May not be denied legal effect, validity, or enforceability solely on the ground that it is electronic; and

(C) Shall be binding on all persons and for all purposes under the law, as if the signature had been handwritten on an equivalent paper document.

(ac) "Similar Rigid Plastic Packaging Containers" means rigid plastic packaging containers that are alike in material type, shape, and volume.

(ad) "Single Resin Type" means made up of only one of the types of plastic resin outlined in Public Resources Code Section 18015.

(ae) "Sold or Offered for Sale" means direct sales, retail sales, and remote sales such as through distributors, wholesalers and the internet.

(af) "Source Reduced Container" means:

(1) A rigid plastic packaging container whose container weight per unit or per number of product uses has been reduced by 10 percent when compared with one of the following:

(A) The rigid plastic packaging container used for the product by the product manufacturer as of January 1, 1995.

(B) The rigid plastic packaging container used for the product by the product manufacturer over the course of the product's first full year of commerce in California.

(C) The rigid plastic packaging container used in commerce during the same year for similar products 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, 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 Article if the reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principle material of the container.

(B) Increasing a container's weight per unit or per number of product uses 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 Department may review any information provided by the product manufacturer, as well as other available information, to determine if the packaging change adversely affects the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(3) Any source reduction achieved by changing the rigid plastic packaging container to a non-rigid plastic container may be credited to other containers as part of the averaging method of compliance described in Section 17944(b).

(4) If a rigid plastic packaging container for a specific product is entirely eliminated and that product is sold in California without any packaging, the source reduction may be credited to other regulated containers used by the product manufacturer as part of the averaging method of compliance described in Section 17944(b).

(ag) "Successor Company" means the legal entity that is developed by a merger, sale, hostile takeover, or other acquisition process, thus replacing the prior legal entity.

Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 40170, 42300, 42301, 42310, 42330 and 42340, Public Resources Code.

Section 17944. Container Requirements.

(a) On or after January 1, 1995, all rigid plastic packaging containers, except a rigid plastic packaging container that is exempt under Section 17946.5 of this Article, sold or offered for sale in California must meet one of the following criteria:

(1) Be made from at least 25 percent postconsumer material and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration. 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.

(2) 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.

(3) Be a reusable rigid plastic packaging container or a refillable rigid plastic packaging container.

(4) Be a source reduced rigid plastic packaging container.

(5) Be a rigid plastic packaging container which contains floral preservative and is subsequently reused by the floral industry for at least two years. This compliance option is only available for rigid plastic packaging containers used by the floral industry in California. Similar rigid plastic packaging containers sold to nurseries, landscapers, retail stores, and other outlets that are not wholesale or retail flower sellers or growers do not qualify for this compliance option.

(b) A product manufacturer may achieve compliance based on averaging. Averages may be calculated using either data specific to rigid plastic packaging containers sold and/or recycled in California or data on rigid plastic packaging containers sold and/or recycled nationwide. 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). Averages may be based on the product manufacturer's entire product line or separated into product sub-lines. If averages are used to achieve compliance, all rigid plastic packaging containers must be accounted for in the calculation or must comply through another compliance option.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42301, 42310, 42310.3, 42326, 42330 and 42340, Public Resources Code.

Section 17944.1. Alternative Container Compliance Method.

(a) Notwithstanding the requirements of Section 17944, a product manufacturer shall be in compliance with the requirements of this Article if it demonstrates through its own actions, or the actions of another company under the same corporate ownership, that one of the following actions was taken during the same measurement period:

(1) The product manufacturer, or another company under the same corporate ownership, consumed postconsumer material generated in California in the manufacture of a rigid plastic packaging container subject to the requirements of Public Resources Code Section 42310, or a rigid plastic packaging container or other plastic products or plastic packaging that is not subject to that section and that is equivalent to, or exceeds the postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in Public Resources Code Section 42310(a).

(2) The product manufacturer arranged by contractual agreement with any company under the same corporate ownership for the purchase and consumption of postconsumer material generated in California and exported to another state for the manufacture of rigid plastic packaging containers subject to Public Resources Code Section 42310, or a rigid plastic packaging container or other plastic product or plastic packaging that is not subject to Public Resources Code Section 42310 that is equivalent to, or exceeds the postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in Public Resources Code Section 42310(a).

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Section 42310.3, Public Resources Code.

Section 17944.2. How Will Waivers Be Granted?

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42310.1, 42326 and 42330, Public Resources Code.

Section 17944.5. Exempt Rigid Plastic Packaging Containers.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42326 and 42340, Public Resources Code.

Section 17945. Who Must Comply With These Regulations?

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42301 and 42325, Public Resources Code.

Section 17945.1. Pre-Certification Process.**(a) Identification of Companies That May Be Subject to Certification.**

Upon the discovery of a product manufacturer that has been newly identified as selling or offering for sale products held in rigid plastic packaging containers into California, the Department shall notify the product manufacturer that it appears to be subject to the requirements of Section 17944 of this Article, and has been added to the group of companies which may be required to certify compliance with this Article. Within 90 calendar days of notification from the Department, the product manufacturer shall submit the following information:

- (1) The designated contact's name and title;
- (2) Contact phone number(s), fax number(s) and e-mail address(es);
- (3) Mailing address(es) and web address (if available); and

(4) If applicable, any information the product manufacturer believes will demonstrate that the product manufacturer does not sell its product(s) within rigid plastic packaging containers in California, as defined in Public Resources Code Section 42301(f), and thus is not subject to this Article.

(b) Pre-Certification Notice.

(1) At least one calendar year before the start of a measurement period, the Department shall select from the group of known product manufacturers a subgroup of companies that may be required to certify compliance for that measurement period. The Department shall notify the selected product manufacturers of this determination in writing by January 31 of the calendar year prior to the start of the measurement period.

(2) Within 90 calendar days of receipt of a pre-certification notice per subsection (b)(1) of this Section, a product manufacturer may seek an advisory opinion from the Department pursuant to Section 17948.2.

(3) Within 90 calendar days of receipt of a pre-certification notice per subsection (b)(1) of this Section, the product manufacturer shall submit the contact information listed in subsection (a) of this Section.

(c) Selection of Companies to Certify Compliance.

The Department may select product manufacturers to certify compliance for a measurement period based on the following hierarchy:

- (1) A selection of product manufacturers that have previously been selected for certification and have not yet been found to be in compliance with this Article;
- (2) A random selection of product manufacturers that have not yet been selected to certify compliance with this Article;
- (3) A random selection of product manufacturers that have previously been selected for certification and have been found to be in compliance with this Article.

(d) Certification Notice.

(1) The Department shall select from the companies previously notified per subsection (b)(1) of this Section the subgroup that will be required to certify compliance for that measurement period.

(2) The Department shall notify the product manufacturers selected for certification by March 31 of the measurement period.

(3) Within 90 calendar days of receipt of a certification notice per subsection (d)(2) of this Section, a product manufacturer may seek an advisory opinion from the Department pursuant to Section 17948.2 for any containers it has introduced since receipt of the pre-certification notice and any request it made per subsection (b)(2) of this Section.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Section 42325, Public Resources Code.

Section 17945.2. Compliance Certifications.

(a) Product manufacturers, upon written notification from the Department, are required to certify to the Department that all of the rigid plastic packaging containers holding their products sold or offered for sale in California comply with the rigid plastic packaging container requirements, pursuant to Public Resources Code Section 42310 or 42310.3. Product manufacturers shall submit the information described in Section 17945.3 in their certifications.

(b) Container manufacturers' certifications provided to product manufacturers shall include the information described in Section 17945.4.

(c) A product manufacturer's completed certification, including any applicable container manufacturer certifications, must be postmarked or sent electronically no later than April 1 of the calendar year immediately following the measurement period.

(d) Prior to the end of the measurement period, a product manufacturer may request an extension for submittal of its certification of up to 30 calendar days for cause. An extension may be granted by the Department only if the product manufacturer provides documentary evidence to justify an extension based on criteria such as corporate acquisitions, corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon the Department's evaluation.

(e) If the Department receives a certification that, upon review, does not include all of the information required by this Article, the Department will notify the product manufacturer and state what additional information or documentation is required. The product manufacturer will then have 30 calendar days after receipt of the notice to provide the required information or documentation. One 30-calendar day extension may be granted for cause by the Department upon request.

(f) At any time, the Department may request information from a product manufacturer outside of any notice of incomplete certification. In such cases, the Department shall mail a written request, and the product manufacturer shall have 60 calendar days following the date of receipt of the request to supply the information.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42310.3, 42325, and 42340, Public Resources Code.

Section 17945.3. Product Manufacturer Certification Information.

(a) 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.

(b) General Product Manufacturer Information

(1) The product manufacturer's name, mailing address, web address (if available), e-mail and telephone number(s), and the name and title of the person responsible for supplying the required information.

(2) A statement of product manufacturer compliance including whether the product manufacturer sold or offered for sale products held in rigid plastic packaging containers into California, and whether some or all of the products were approved for a waiver pursuant to Section 17946, and whether some or all of the containers qualified for an exemption pursuant to Section 17946.5.

(3) If the product manufacturer is a corporation, the certification must be signed under penalty of perjury by the president or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer, a general manager, or other such person authorized by the corporation to accept service of process. If the product manufacturer is a partnership or sole proprietorship, the certification must be signed by a general partner or the sole proprietor. The certification shall include the following statement, the title of the signatory and the date of signature.

"I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete."

(c) Container Information

For each container line (whether or not it was included in a prior certification cycle):

(1) A description of the type of each rigid plastic packaging container (i.e., jar, bottle, clamshell, etc.).

(2) The associated product(s) or advertised brand name(s).

(3) The volume or equivalent capacity of each rigid plastic packaging container.

(A) The capacity or size must be expressed in the same unit of volume that is used on the container label; and

(B) For products that are sold based on weight or a numeric count, the size should be reported on an equivalent volume basis.

(4) The weight, in grams, of each individual rigid plastic packaging container.

(5) The plastic resin type(s) of each rigid plastic packaging container.

(6) The total quantity of rigid plastic packaging containers sold during the measurement period. This data should include:

(A) Direct sales by the product manufacturer;

(B) Sales through distributors, franchises, dealers, and agents;

(C) All mail-order and Internet sales; and

(D) A statement as to whether the data is based on sales in California or nationally.

(7) The associated container manufacturer and a copy of any container manufacturer certification(s) and information pursuant to Section 17945.4. The product manufacturer is responsible for ensuring that its report is consistent with any container manufacturer certification obtained.

(d) Product Manufacturer Certification Requirements for Each Compliance Option

In addition to the information in subsection (c) of this Section, a product manufacturer shall submit the following information specific to the container compliance option(s) claimed:

(1) Postconsumer Material Content Compliance

For rigid plastic packaging containers for which compliance is claimed pursuant to Section 17944(a)(1) through the use of postconsumer material in the containers:

(A) The weight, in grams, of postconsumer material in each of the rigid plastic packaging container(s) for which compliance is claimed; and

(B) The percentage of postconsumer material in each of the rigid plastic packaging container(s) as calculated using the formula(s) in Section 17945.5(b).

(2) Source Reduction – Reduced Container Weight Compliance

For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(4) through a reduction in container weight:

(A) The weight, in grams, of each rigid plastic packaging container prior to source reduction;

(B) The percentage each rigid plastic packaging container was source reduced for that product as calculated using the applicable formula(s) in Section 17945.5(d); and

(C) The date (e.g., month/year) of the source reduction.

(3) Source Reduction – Product Concentration Compliance

For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(4) through a concentration of product:

(A) The number of product uses per unit before and after the product concentration, and the methodology used to calculate this change;

(B) The percentage the product was source reduced as calculated using the applicable formula in Section 17945.5(d); and

(C) The date (e.g., month/year) of the source reduction.

(4) Source Reduction – Product Concentration/Reduced Container Weight Compliance

For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(4) through a combination of concentrating the product and reducing the weight of the rigid plastic packaging container that holds the product:

(A) The weight, in grams, of each rigid plastic packaging container prior to source reduction;

(B) The number of product uses per unit before and after the product concentration, and the methodology used to calculate this change;

(C) The weight, in grams, per unit of product use for each rigid plastic packaging container before and after source reduction;

(D) The percentage by which each rigid plastic packaging container was source reduced as calculated using the applicable formula(s) in Section 17945.5(d); and

(E) The date (e.g., month/year) of the source reduction.

(5) Source Reduction – Comparison to Similar Products Compliance

For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(4) through a comparison to similar products in similar rigid plastic packaging containers:

(A) The advertised brand name(s) of the product(s) in the similar rigid plastic packaging container(s), and the name(s) of the primary product manufacturer, distributor, or importer on the label(s) of the similar rigid plastic packaging container(s);

(B) The weight, in grams, and the volume of each similar rigid plastic packaging container; and

(C) Any physical samples and/or photograph(s) of the similar rigid plastic packaging container(s) and label(s) which clearly show(s) the name(s) of the product(s), if requested by the Department to verify compliance.

(6) Reusable Rigid Plastic Packaging Container Compliance

This option will demonstrate compliance for the original rigid plastic packaging containers only. The replacement product, if packaged in a rigid plastic packaging container, must comply under another compliance option. For rigid plastic packaging

containers where compliance is claimed pursuant to Section 17944(a)(3) through reuse of the container:

(A) The number of original plastic packaging containers and of replacement packages sold during the measurement period;

(B) The volume of each original rigid plastic packaging container and each replacement package;

(C) The average number of times the rigid plastic packaging container was reused during the measurement period as calculated using the applicable formula in Section 17945.5(e); and

(D) If not using the calendar year of the certification, a statement of the 12-month period that was used to determine the number of times the identified rigid plastic packaging containers were reused, and a description of how and why that measurement period was selected.

(7) Refillable Rigid Plastic Packaging Container Compliance

For containers where compliance is claimed pursuant to Section 17944(a)(3) through the refilling of the original rigid plastic packaging container by the product manufacturer:

(A) The number of refills of the rigid plastic packaging containers by the product manufacturer during the measurement period;

(B) The average number of times the rigid plastic packaging container was refilled within the measurement period as calculated using the applicable formula in Section 17945.5(f); and

(C) If not using the calendar year of the certification, a statement of the 12-month period that was used to determine the number of times that the identified rigid plastic packaging containers were refilled and a description of how and why that measurement period was selected.

(8) Particular Type, Product Associated, or Single Resin Type Rigid Plastic Packaging Container Recycling Rate Compliance

For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(2) through recycling of the particular type, product associated, or single resin type rigid plastic packaging container:

(A) Approval of Recycling Rate Methodology:

1. Within 90 calendar days of receipt of a Certification Notice pursuant to Section 17945.1(d), the product manufacturer shall submit a written request to the

Department presenting its proposed particular type, product associated, or resin-specific recycling rate methodology. This methodology shall explain in detail how the figures will be derived and obtained.

2. A product manufacturer using this recycling rate compliance option may designate any person or entity to design the methodology, perform the studies, and submit supporting documentation to the Department on its behalf.

3. The Department will review the proposed methodology and approve or disapprove it within 90 calendar days of receipt. If disapproved, the product manufacturer may resubmit a revised methodology for review as the Department must approve of the methodology prior to its use by a product manufacturer for determining compliance.

4. Once a methodology has been approved by the Department, that methodology shall be used to determine the rates submitted as part of a compliance certification. If the approved methodology is not used and the product manufacturer selects this compliance option, the Department may find the product manufacturer to be out of compliance. The methodology remains valid to determine compliance in future years. Authorization for modifying a methodology shall be sought using the same method listed in Section 17945.3(c)(8)(A)1.

(B) Compliance Data:

The product manufacturer shall submit objective, scientific evidence of the rigid plastic packaging container's comparable recyclability, recycled content, recycling rate, regulated status, impact on California's market place, and ability to be made of postconsumer material, including:

1. The recycling rate, expressed as a percentage, for the particular type, product associated, or resin specific rigid plastic packaging container(s) sold in California;

2. The number of particular type, product associated, or resin specific rigid plastic packaging containers collected, recycled, or diverted from disposal in California for recycling;

3. The Department-approved methodology used to determine the recycling rate, and a detailed explanation of the methodology used to determine the sales rate; and

4. Any other information that the product manufacturer believes is necessary to substantiate its compliance claim.

(9) Floral Industry Compliance

For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(5) through the reuse of containers by the floral industry, a product manufacturer shall submit to the Department:

(A) Approval of Methodology:

1. Within 90 calendar days of receipt of a Certification Notice pursuant to Section 17945.1(d), a written request demonstrating how each rigid plastic packaging container will meet the two-year reuse criteria, including the proposed methodology used to determine the following:

a. The number of rigid plastic packaging containers sold to the floral industry in California;

b. The total number of rigid plastic packaging containers sold in California; and

c. The average reuse (in years) of each rigid plastic packaging container purchased by the floral industry in California.

2. The Department will review the methodology and approve or disapprove it within 90 calendar days of receipt. If disapproved, the product manufacturer may resubmit a revised methodology for review as the Department must approve of the methodology prior to its use by a product manufacturer for determining compliance.

3. Once a methodology has been approved by the Department, that methodology shall be used to determine the reuse submitted as part of a compliance certification. If the approved methodology is not used and the product manufacturer selects this compliance option, the Department may find the product manufacturer to be out of compliance. The methodology remains valid to determine compliance in future years. Authorization for modifying a methodology shall be sought using the same method listed in Section 17945.3(d)(9)(A)1.

(B) Compliance Data:

1. The number of times each rigid plastic packaging container is reused by the floral industry in California;

2. The number of rigid plastic packaging containers sold to the floral industry in California;

3. The Department-approved methodology used to determine the reuse; and

4. Any other information that the product manufacturer believes is necessary to substantiate its compliance claim.

(e) Alternative Container Compliance Method Information

(1) A product manufacturer claiming compliance pursuant to Section 17944.1(a)(1) or (2), shall submit to the Department the following information:

(A) The number and weight, in grams, of each other plastic product or plastic package sold during the measurement period;

(B) The weight, in grams, of postconsumer material in each rigid plastic packaging container and each other plastic product or plastic package;

(C) The percentage of postconsumer material used in rigid plastic packaging containers or other plastic products or plastic packaging, as calculated using the formula in Section 17945.5(c);

(D) The total weight, in grams, of California postconsumer material purchased and used in the manufacture of rigid plastic packaging containers subject to this Article or of rigid plastic packaging containers or other plastic products or plastic packaging not subject to this Article;

(E) Name(s), contact person(s), address(es), e-mail(s) and phone number(s) of the supplier(s) of the California postconsumer material;

(F) If the postconsumer material reported per subsection (D) of this Section includes such material as defined in Section 17943(q)(1) and (2), additional documentation including, at a minimum, the following:

1. Contact information for the supplier of the plastic(s) (name, address, phone number, e-mail).

2. Total weight, in grams, of the plastic received.

3. Date of receipt of the plastic.

4. Description of the material being claimed as postconsumer. This description shall include, but is not limited to:

a. The type of plastic resin.

b. The form in which the material was received (baled, flaked, etc.).

c. A description of the plastic material, such as product bar codes, Stock Keeping Unit (SKU), or other information that verifies that the plastic was made up of obsolete or unsold rigid plastic packaging containers and/or rejected finished plastic packaging.

(2) A product manufacturer claiming compliance based on the consumption of postconsumer material through contractual arrangement, as specified in Section 17944.1 (a)(2), shall submit to the Department the following additional information:

(A) If different from the amount reported per subsection (e)(1)(D) of this Section, the total weight, in grams, of California postconsumer material purchased and exported to another state during the measurement period for the manufacture of rigid plastic packaging containers or other plastic products or plastic packaging;

(B) The names of contractor(s), contact person(s), address(es), e-mail(s), phone number(s), and a copy of the contractual agreement(s) for the purchase and consumption of postconsumer material generated in California to be exported to another state for the manufacture of rigid plastic packaging containers or other plastic products or plastic packaging;

(C) The name(s), contact person(s), address(es), e-mail(s) and phone number(s) of the manufacturer(s) the California postconsumer material was exported to; and

(D) Documentation from the contracted product manufacturer that the California postconsumer material was used in the manufacture of rigid plastic packaging containers or other plastic products or plastic packaging during the measurement period.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42310.3, 42320, and 42325, Public Resources Code.

Section 17945.4. Container Manufacturer Certification Information.

(a) Container manufacturers shall provide to the product manufacturers, at a minimum, the following information:

(1) The container manufacturer's name, mailing address, web address (if available), e-mail and telephone number, and the name and title of the person responsible for supplying the required information;

(2) The name, address, e-mail and telephone number of the product manufacturer at whose request the container manufacturer is completing the certification and the name and title of the person representing the product manufacturer that requested completion of a container manufacturer certification;

(3) To document postconsumer material content, a statement of the following:

(A) The type (i.e., jar, bottle, clamshell, etc.) and volume (or equivalent capacity) of each rigid plastic packaging container;

(B) The total weight, in grams, of each rigid plastic packaging container;

(C) The weight, in grams, of postconsumer material used to manufacture each specified rigid plastic packaging container;

(D) The percentage of postconsumer material used in each rigid plastic packaging container; and

(E) If the postconsumer material used includes such material as defined in Section 17943(q)(1) and (2), the documentation shall contain, at a minimum, the following:

1. Contact information for the supplier(s) of the plastic(s) (name, address, phone number, e-mail).

2. Total weight, in grams, of the plastic(s) received.

3. Date(s) of receipt of the plastic(s).

4. Description of the material being claimed as postconsumer, including but not limited to:

a. The type of plastic resin.

b. The form in which the material was received (e.g., baled, flaked).

c. A description of the plastic material, such as product bar codes, Stock Keeping Unit (SKU), or other information that verifies that the plastic was made up of obsolete or unsold rigid plastic packaging containers and/or rejected finished plastic packaging.

(4) To document source reduction that was achieved by a reduction in rigid plastic packaging container weight, a statement of the following:

(A) The type and volume of each rigid plastic packaging container;

(B) The weight in grams of each type and volume of rigid plastic packaging container before and after source reduction occurred; and

(C) The date (e.g., month/year) of the source reduction.

(b) If the container manufacturer is a corporation, the certification must be signed under penalty of perjury by the president or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or other such person authorized by the corporation to accept service of process. If the container manufacturer is a partnership or sole proprietorship, the certification must be

signed by a general partner or the sole proprietor. The certification shall include the following statement, the title of the signatory and the date of signature.

“I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete.”

Authority cited: Sections 40502 and 42325, Public Resources Code.
 Reference: Sections 42310, 42320, and 42325, Public Resources Code.

Section 17945.5. Compliance Calculation and Formulas.

(a) The product manufacturer shall use the following formulas to calculate its claim of compliance. The calculation shall be carried out to two decimal places. Unless otherwise noted, all weights should be in grams and all calculations should be by container line.

(b) Postconsumer Material Content Compliance

For rigid plastic packaging containers for which compliance is claimed through the use of postconsumer material (PCM) content pursuant to Section 17944(a)(1), use the following formulas:

(1) For a single rigid plastic packaging container line:

$$\text{Percent PCM} = \left[\frac{W_{\text{PCM}}}{W_{\text{RPPC}}} \right] \times 100$$

where: W_{PCM} = the weight of postconsumer material in each rigid plastic packaging container
 W_{RPPC} = the total weight of each rigid plastic packaging container

(2) For averaging multiple rigid plastic packaging container lines:

$$\text{Percent PCM} = \left[\frac{\sum (W_{\text{PCM}})_n}{\sum (W_{\text{RPPC}})_n} \right] \times 100$$

where: W_{PCM} = the weight of postconsumer material in each rigid plastic packaging container
 W_{RPPC} = the total weight of each rigid plastic packaging container
 n = the number of container lines being averaged

(3) To comply under this option, the postconsumer material content must be equal to or greater than 25.00 percent.

(c) Alternative Container Compliance Method

For compliance claimed through use of California postconsumer material pursuant to Section 17944.1, use the following formula:

$$\text{Percent PCM} = \left[\frac{\sum (W_{\text{PCM}} \times N_{\text{RPPC}})_n + \sum (W_{\text{OPP}} \times N_{\text{OPP}})_n}{W_{\text{RPPC}}} \right] \times 100$$

- where: W_{PCM} = the weight of postconsumer material in each rigid plastic packaging container
- N_{RPPC} = the number of rigid plastic packaging containers
- W_{OPP} = the weight of postconsumer material in each other (i.e., non-RPPC) plastic packaging container or plastic product
- N_{OPP} = the number of other (non-RPPC) plastic packaging containers or units of plastic products
- n = the number of container (or other plastic packaging or plastic product) lines being averaged
- W_{RPPC} = the total weight of the rigid plastic packaging containers in the rigid plastic packaging container lines

To comply under this option, the postconsumer material content must be equal to or greater than 25.00 percent.

(d) Source Reduction Compliance

For rigid plastic packaging containers for which compliance is claimed through source reduction pursuant to Section 17944(a)(4), use the following formulas:

(1) For a single rigid plastic packaging container line where the container weight has been reduced:

$$\begin{array}{l} \text{Percent} \\ \text{Source} \\ \text{Reduced} \end{array} = \left[\frac{W_N - W_S}{W_N} \right] \times 100$$

- where: W_N = the weight of the non-source reduced rigid plastic packaging container
- W_S = the weight of the source reduced rigid plastic packaging container

(2) For a single rigid plastic packaging container line where the product has been concentrated:

$$\begin{array}{l} \text{Percent} \\ \text{Source} \\ \text{Reduced} \end{array} = \left[\frac{USE_N - USE_S}{USE_N} \right] \times 100$$

where: USE_N = units of use of the non-source reduced product
 USE_S = units of use of the source reduced (concentrated) product

(3) For a single rigid plastic packaging container line with a combination of concentrating the product and reducing the weight of the rigid plastic packaging container that holds the product:

$$\text{Percent Source Reduced} = \left(\frac{(W_N / USE_N) - (W_S / USE_S)}{(W_N / USE_N)} \right) \times 100$$

where: W_N = the weight of the non-source reduced rigid plastic packaging container
 USE_N = units of use of the non-source reduced rigid plastic packaging container
 W_S = the weight of the source reduced rigid plastic packaging container
 USE_S = units of use of the source reduced rigid plastic packaging container

(4) For averaging source reduction over multiple rigid plastic packaging container lines with either container weight reduction and/or product concentration:

$$\text{Percent Source Reduced} = \left(\frac{\sum [(W_N / USE_N) - (W_S / USE_S)]_n}{\sum (W_N / USE_N)_n} \right) \times 100$$

where: W_N = the weight of the non-source reduced rigid plastic packaging container
 USE_N = units of use of the non-source reduced rigid plastic packaging container
 W_S = the weight of the source reduced rigid plastic packaging container
 USE_S = units of use of the source reduced rigid plastic packaging container
 n = the number of container lines being averaged

(5) To comply under this option, the Percent Source Reduced must be equal to or greater than 10.00 percent.

(e) Reusable Rigid Plastic Packaging Container Compliance

For rigid plastic packaging containers for which compliance is claimed through reuse of the containers pursuant to Section 17944(a)(3), use the following formulas for the given measurement period:

(1) For a single rigid plastic packaging container line:

$$\begin{array}{l} \text{Average Reuse} \\ \text{Per Rigid Plastic} \\ \text{Packaging Container} \end{array} = \left[\frac{R \times V_R}{P \times V_P} \right]$$

where: R = the number of replacement product packages sold during the period
 P = the number of original rigid plastic packaging containers sold during the period
 V_R = the volume of the replacement product package
 V_P = the volume of the original rigid plastic packaging container

(2) For averaging multiple rigid plastic packaging container lines:

$$\begin{array}{l} \text{Average Reuse} \\ \text{Per Rigid Plastic} \\ \text{Packaging} \\ \text{Container} \end{array} = \frac{\sum (R \times V_R)_n}{\sum (P \times V_P)_n}$$

where: R = the number of replacement product packages sold during the period
 P = the number of original rigid plastic packaging containers sold during the period
 V_R = the volume of the replacement product package
 V_P = the volume of the original rigid plastic packaging container
 n = the number of container lines being averaged

(3) If the replacement product is a different concentration than the original product, the product manufacturer must provide the appropriate conversion factor. The conversion factor shall explain the number of uses per weight unit or volume unit of product for both the original product and for the replacement product.

(4) To comply under this option, the Average Reuse Per Container must be equal to or greater than 5.00 reuses.

(f) Refillable Rigid Plastic Packaging Container Compliance

For rigid plastic packaging containers for which compliance is claimed through the refilling of the container by the product manufacturer pursuant to Section 17944(a)(3), use the following formulas for the given measurement period:

(1) For a single rigid plastic packaging container line:

$$\begin{array}{l} \text{Average Refills} \\ \text{Per Container} \end{array} = \frac{F}{P}$$

where: F = the number of refills of rigid plastic packaging containers made by the product manufacturer during the period

P = the number of original rigid plastic packaging containers sold during the measurement period

(2) For averaging multiple rigid plastic packaging container lines:

$$\frac{\text{Average Refills Per Container}}{\text{Per Container}} = \frac{\sum (F)_n}{\sum (P)_n}$$

where: F = the number of refills of rigid plastic packaging containers made by the product manufacturer during the period

P = the number of original rigid plastic packaging containers sold during the measurement period

n = the number of container lines being averaged

(3) To comply under this option, the Average Refills Per Container must be equal to or greater than 5.00 refills.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42320, and 42325, Public Resources Code.

Section 17946. Waivers.

(a) In accordance with Public Resources Code Section 42330(c), the Department shall grant a waiver from rigid plastic packaging container compliance under Section 17944 for a newly introduced product sold in California, upon petition by a product manufacturer pursuant to subsection (c) of this Section.

(b) Such waivers from compliance with 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.

(c) Petition for Waiver

To receive a waiver, a product manufacturer shall petition the Department as part of the compliance certification process. Within 90 calendar days of receipt of notice that it has been selected for certification (per Section 17945.1(d)), or by the end of the certification period for newly introduced containers not known within 90 calendar days of the notice, the product manufacturer shall submit to the Department a written petition that includes the following information:

(1) The newly introduced product for which the waiver is being requested;

(2) The name, mailing address, e-mail, and telephone number of the contact person to whom the Department shall direct future communications relating to the petition;

(3) Documentation and supporting evidence demonstrating the date the product was or will be first sold or offered for sale in California during the measurement period.

(4) Documentation demonstrating the product conforms to the “newly introduced product” definition;

(5) The documentation must be submitted under penalty of perjury, and include the following statement, the title of the signatory and the date of signature: “I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete.”

(d) Upon receipt of a product manufacturer’s petition for a waiver, the Department will review the petition and will grant or deny the petition in writing within 90 calendar days.

(e) The Department will grant a general waiver to all product manufacturers from compliance with the rigid plastic packaging container requirements, in accordance with Public Resources Code Section 42330(b)(1), if less than 60 percent of California’s single family households have access to curbside collection programs which include beverage container recycling. It is not necessary to petition the Department for this waiver. The Department may use curbside collection data submitted as part of the beverage container recycling related requirements biannually to obtain the information necessary to determine whether this waiver should go into effect.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42325 and 42330, Public Resources Code.

Section 17946.5. Exempt Rigid Plastic Packaging Containers.

(a) Pursuant to Public Resources Code Section 42340, the following rigid plastic packaging containers are exempt from the requirements of this Article.

(1) Rigid plastic packaging containers produced in or out of California which are destined for shipment to other destinations outside the state and which remain with the products during that shipment. "Destined for shipment to other destinations outside the state" means that the sale of the rigid plastic packaging container to the final end user occurs outside California.

(2) Rigid plastic packaging containers that contain drugs, medical devices, cosmetics, food, medical food, or infant formula as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.).

(3) Rigid plastic packaging containers that contain toxic or hazardous products regulated by the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(4) Rigid plastic packaging containers that are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used material by federal packaging material specifications and testing standards set forth in Section 178.509 and 178.522 of Title 49 of the Code of Federal Regulations, or are subject to testing standards set forth in Sections 178.600 to 178.609, inclusive, of Title 49 of the Code of Federal Regulations, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

(b) To claim an exemption, a product manufacturer, within 90 calendar days of receiving a certification notice pursuant to Section 17945.1(d), shall submit to the Department the following information:

(1) Photograph(s) of the rigid plastic packaging container(s) and label(s) which clearly show(s) the name(s) of the product(s) for which the exemption is being claimed;

(2) The basis for the exemption, which shall include specific citation to any applicable federal statutes, regulations, any applicable registration numbers, and supporting documentation needed to validate the exemption claim; and

(3) The name, mailing address, e-mail, and telephone number of the person to whom the Department shall direct future communication relating to the exemption.

The documentation must be submitted under penalty of perjury, and include the following statement, the title of the signatory and the date of the signature:

“I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete.”

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42326 and 42340, Public Resources Code.

Section 17947. Auditing.

(a) The Department, or its agent, may audit product manufacturer compliance certifications. The Department, or its agent, may ask for supporting documentation as described in Sections 17945.2 and 17945.3 of this Article.

(b) To obtain documentation, the Department or its agent shall send a written request. The recipient of a request for documentation shall have 60 calendar days following the confirmed date of delivery of the request to supply the documentation.

(c) Failure to provide the requested information in accordance with this Article may result in violations and penalties as set forth in Section 17949 of this Article.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42320 and 42321, Public Resources Code.

Section 17948. Proprietary, Confidential, or Trade Secret Information.

The public disclosure of records supplied to the Department pursuant to this Article that are, at the time of submission, claimed to be proprietary, confidential, or trade secret shall be subject to the disclosure provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with Section 17041).

Authority cited: Section 6253, Government Code. Sections 40502 and 42325, Public Resources Code.

Reference: Sections 6250 et seq., Government Code. Sections 40062 and 42323, Public Resources Code.

Section 17948.1. Retention of Records.

(a) For all rigid plastic packaging container compliance options other than source reduction used by a product manufacturer, all documentation supporting any compliance claim shall be retained by the product manufacturer and available at the request of the Department for at least three (3) years following the end of the measurement period.

(b) For source reduction compliance claims, supporting documentation demonstrating the specifications of the original non-source reduced rigid plastic packaging container shall be retained by the product manufacturer and available at the request of the Department for any and all years the product manufacturer intends to claim compliance with this Article through source reduction for that specific rigid plastic packaging container and at least three (3) years thereafter.

(c) For all container manufacturer certifications, the supporting documentation shall be retained by the container manufacturer and available at the request of the product manufacturer for at least three (3) years following the end of the measurement period.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42320 and 42325, Public Resources Code.

Section 17948.2. Advisory Opinions.

(a) A product manufacturer selected for pre-certification pursuant to Section 17945.1(b), or for certification pursuant to Section 17945.1(d)(3), may request the Director provide written advice with respect to the product manufacturer's compliance with this Article by submitting a written request to the Department's legal office.

(b) Written advice shall only be provided to product manufacturers that have been notified pursuant to Section 17945.1(b) that they may be required, or pursuant to Section 17945.1(d) that they will be required, to certify compliance with this Article.

(c) A request for written advice shall not be acted on by the Department unless it is submitted in writing to the Department's legal office within 90 calendar days of the product manufacturer's receipt of notification as described in subsection (b) of this Section and includes the following information:

(1) The name, title or position, phone number, e-mail, and mailing address of the representative of the product manufacturer whose compliance is in question; and

(2) All the facts material to the consideration of the question or questions presented provided in a clear and concise manner, including studies or physical examples where appropriate.

(d) If a written request for advice does not meet the requirements in subsections (a) through (c) of this Section, the Department shall notify the requestor of that fact in writing.

(e) The Director shall issue a written opinion within 90 calendar days of receiving a request that meets the requirements of this section.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Section 42325, Public Resources Code.

Section 17948.5. Letters of Non-Objection.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310 and 42323, Public Resources Code.

Section 17949. Violations and Penalties.

(a) Pursuant to Public Resources Code Section 42321, within 30 calendar days of the Department determining that an entity provided the Department with a false or

misleading compliance certification, the Department may refer that entity to the Attorney General for prosecution for fraud.

(b) A container manufacturer that submits to a product manufacturer a certification with false or misleading information shall be subject to the same penalties and fines that are imposed upon product manufacturers (see Violation 4 in subsection (d) of this Section). A product manufacturer is not subject to any fine or penalty for not complying as a result of the submittal of false or misleading information by a container manufacturer.

(c) Any violation of this Article is a public offense and is punishable by a fine not to exceed \$100,000. In addition, violators may be subject to a civil penalty not to exceed \$50,000 per violation. Total fines and penalties are not to exceed \$100,000 per annum (i.e., calendar year certification cycle) for each violator. On or before July 1st of each year, the Department shall publish a list 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.

(d) Penalties for specified violations of program requirements are as follows.

Violation	Description of Violation	Penalty
(1) CCR Section 17944; PRC Section 42310	Product manufacturer did not comply with rigid plastic packaging container requirements in accordance with Sections 17945.3 and 17945.5 of this Article. Penalty determined by degree of noncompliance.	\$5,000—\$50,000 See Section 17949(e).
(2) CCR Section 17945.2	Product manufacturer did not submit certification by due date.	\$1,000—\$50,000 See Section 17949(f).
(3) CCR Section 17945.2; 17945.3	Product manufacturer did not submit complete or accurate certification by due date. Degree of incompleteness or inaccuracies include, but are not limited to, misreporting exemptions, failure to account for all products, failure to account for subsidiaries and divisions, lack of container manufacturer’s verification of number of containers sold or weight of containers,	\$1,000—\$50,000 See Section 17949(g).

	inconsistencies in information between product manufacturer and container manufacturer, lack of signatures, mathematical inaccuracies.	
(4) CCR Section 17945.2; 17945.3; 17945.4; PRC Section 42321	Product manufacturer or container manufacturer submitted false or misleading information on certification.	Referral to Attorney General for prosecution for fraud within 30 calendar days of discovery by the Department; maximum fine, \$100,000.

(e) When product manufacturers do not comply with the rigid plastic packaging container requirements in Sections 17945.3 and 17945.5 (i.e., Violation 1 in the preceding table), the Department will calculate penalties using the data from the approved compliance certifications and the following formulas. The process gives credit for progress in meeting compliance options by container line (or averaged container lines), and the total penalty is based on a weighted average calculation of the product manufacturer’s overall compliance.

(1) Postconsumer Material Content Compliance and Alternative Container Compliance Method Penalty Calculation.

For each rigid plastic packaging container line (or average of multiple container lines) claiming a postconsumer material compliance option per Section 17945.3(d)(1) or alternative container compliance method option per Section 17945.3(e):

$$\text{Penalty} = \left[\frac{\sum(W_{RPPC} \times N_{RPPC})_n}{W_{PM}} \right] \times [50,000 - (CC \times D)]$$

- where: W_{RPPC} = the weight of each rigid plastic packaging container
- N_{RPPC} = the total number of rigid plastic packaging containers
- n = the number of container lines in the compliance calculation
- W_{PM} = the total weight of rigid plastic packaging containers for all the product manufacturer’s lines (calculated such as shown in the Sample Table below)
- CC = the calculated compliance rate per the applicable formula in Section 17945.5(b) or (c)
- D = 2,000 if the line’s postconsumer material compliance value was at least 25 percent (i.e., in compliance) OR 1,800 if the value was less than 25 percent (i.e., out of compliance)

(2) Source Reduction Compliance Penalty Calculation.

For each rigid plastic packaging container line (or average of multiple container lines) claiming a source reduction compliance option per Section 17945.3(d)(2), (3), (4) or (5):

$$\text{Penalty} = \left[\frac{\sum(W_S \times N_S)_n}{W_{PM}} \right] \times [50,000 - ((CC \times 2.5) \times D)]$$

- where: W_S = the weight of each source reduced rigid plastic packaging container
- N_S = the total number of source reduced rigid plastic packaging containers
- n = the number of container lines in the compliance calculation
- W_{PM} = the total weight of rigid plastic packaging containers for all the product manufacturer's lines (calculated such as shown in the Sample Table below)
- CC = the calculated compliance rate per the applicable formula in Section 17945.5(d)
- 2.5 = the factor used so that the penalties due will equal zero or less for lines in compliance
- $D = 2,000$ if the line's source reduction compliance value was at least 10 percent (i.e., in compliance) OR 1,800 if the value was less than 10 percent (i.e., out of compliance)

(3) Reusable or Refillable Rigid Plastic Packaging Container Compliance Penalty Calculation.

For each rigid plastic packaging container line (or average of multiple container lines) claiming a reuse or refill compliance option per Section 17945.3(d)(6) or (7):

$$\text{Penalty} = \left[\frac{\sum(W_P \times P)_n}{W_{PM}} \right] \times [50,000 - ((CC \times 5) \times D)]$$

- where: W_P = the weight of each original rigid plastic packaging container sold
- P = the number of original rigid plastic packaging containers sold
- n = the number of container lines in the compliance calculation
- W_{PM} = the total weight of rigid plastic packaging containers for all the product manufacturer's lines (calculated such as shown in the Sample Table below)
- CC = the calculated compliance rate per the applicable formula in Section 17945.5(e) or (f)
- 5 = the factor used so that the penalties due will equal zero or less for lines in compliance
- $D = 2,000$ if the line's reuse or refill compliance value was at least 5 (i.e., in compliance) OR 1,800 if the value was less than 5 (i.e., out of compliance)

(4) Recycling Rate Compliance Penalty Calculation.

For each rigid plastic packaging container line (or average of multiple container lines) claiming a recycling rate compliance option per Section 17945.3(d)(8):

$$\text{Penalty} = \sum \left[\frac{(W_{\text{RPPC}} \times N_{\text{RPPC}})_n}{W_{\text{PM}}} \right] \times [50,000 - ((\text{CC} \times 0.555556) \times D)]$$

- where: W_{RPPC} = the weight of each rigid plastic packaging container
- N_{RPPC} = the total number of rigid plastic packaging containers
- n = the number of container lines in the compliance calculation
- W_{PM} = the total weight of rigid plastic packaging containers for all the product manufacturer’s lines (calculated such as shown in the Sample Table below)
- CC = the calculated compliance rate per the approved methodology per Section 17943.5(d)(8)
- 0.555556 = the factor used so that the penalties due will equal zero or less for lines in compliance
- $D = 2,000$ if the line’s recycling rate compliance value was at least 45 percent (i.e., in compliance) OR 1,800 if the value was less than 45 percent (i.e., out of compliance)

(5) Floral Industry Compliance Penalty Calculation.

For each rigid plastic packaging container line (or average of multiple container lines) claiming a floral industry compliance option per Section 17945.3(d)(9):

$$\text{Penalty} = \left[\frac{\sum (W_{\text{P}} \times P)_n}{W_{\text{PM}}} \right] \times [50,000 - ((\text{CC} \times 1.0416667) \times D)]$$

- where: W_{P} = the weight of each original rigid plastic packaging container sold
- P = the number of original rigid plastic packaging containers sold
- n = the number of container lines in the compliance calculation
- W_{PM} = the total weight of rigid plastic packaging containers for all the product manufacturer’s lines (calculated such as shown in the Sample Table below)
- CC = the calculated compliance rate, in months, per the approved methodology per Section 17943.5(d)(9)
- 1.0416667 = the factor used so that the penalties due will equal zero or less for lines in compliance (i.e., with reuse of at least 24 months)
- $D = 2,000$ if the line’s floral container compliance value was at least 24 months (i.e., in compliance) OR 1,800 if the value was less than 24 months (i.e., out of compliance)

(6) As shown in the sample table following, the Department will sum the weights of the product manufacturer’s rigid plastic packaging containers for each line (and/or average of lines, when applicable) in order to calculate the weighted Violation 1 penalties due by line and in total. The “calculated compliance values” (“CC”s in the formulas

above) are those submitted in the product manufacturer’s certification and subsequently reviewed and approved by the Department. The “weighted penalties” by line are calculated using the formulas above. Where the “Total Penalty” is less than or equal to zero, no payment is due. (Note that this chart does not show the entire calculation, just the components identified above.)

Sample Table

	(A)	(B)	(C)	(D)	(E)	(F)
Cont. Line	Compliance Option & Threshold	Total # RPPCs	Wt of Indiv RPPC (gms)	Total RPPC Wt (B x C) (gms)	Calc’d Compliance Value (% or #)	Weighted Penalty (\$)
1	PCM (25%)	5,000,000	55.00	275,000,000	9.00 %	\$ 443.77
2	Avg PCM (25%)	10,000,000	100.00	1,000,000,000	35.00 %	(620.65)
3	Source Red (10%)	55,000	75.00	4,125,000	10.00 %	0
4	Reuse (5.0)	9,500	65.00	617,500	5.00	0
5	Refill (5.0)	6,300,000	100.00	630,000,000	3.60	529.37
Total			W_{PM}:	1,909,742,500	Total:	\$352.49

(f) Certifications submitted late shall be assessed the following penalties:

Days Late	Amount of Penalty
1 - 30	\$1,000
31 - 60	\$5,000
More than 60	Up to \$50,000 (Considered nonresponsive)

(g) Certifications submitted incomplete or with inaccuracies shall be assessed penalties as follows:

(1) The amounts shall be based on the significance and degree of incompleteness and/or inaccuracy:

Significance of Incompleteness and/or Inaccuracy	Degree of Incompleteness and/or Inaccuracy	
	MAJOR	MINOR
	\$50,000	\$34,999
MAJOR	TO	TO
	\$35,000	\$25,000
	\$24,999	\$14,999
MODERATE	TO	TO
	\$15,000	\$10,000
	\$9,999	\$4,999
MINOR	TO	TO
	\$5,000	\$1,000

(2) The level of a compliance certification’s incompleteness or inaccuracy shall be determined by the Department as follows:

(A) The degree will be “minor” or “major” depending on the amount of information missing or inaccurately stated as compared to the required content per Section 17945.3 and calculations per Section 17945.5; and

(B) The significance will be “minor,” “moderate,” or major” depending on the extent to which it affects the Department’s ability to determine the product manufacturer’s compliance.

(C) For example, if the Department cannot replicate the compliance calculations from the information provided, that would likely be of “major” significance and degree. If compliance with most but not all of the product manufacturer’s containers are included, that would likely be of “moderate” significance and “major” degree. If the Department cannot determine the appropriateness of exemption claims or new product waivers, that would likely be at least of “moderate” significance but “minor” degree. Missing or inaccurate company information would likely be of “minor” significance and “minor” degree.

(h) An Administrative Law Judge or the Department may consider factors in modifying or reducing penalties for violations, such as, but not limited to evidence of the following:

- (1) Impact on diversion or sustainable markets in California;
- (2) Size of the product manufacturer;
- (3) Technological feasibility of compliance;

(4) Good faith efforts to comply with this Article, including history of previous compliance;

(5) The economic advantage of not complying with this Article.

Authority cited: Sections 40502 and 42325, Public Resources Code.

Reference: Sections 42310, 42321 and 42322, Public Resources Code.