

| Summary and Response to Comments: Proposed Regulations On Existing Rigid Plastic Packaging Container (RPPC) Program Regulations. First 45-day Public Comment Period, Public Hearing and Workshops. | | | | | |
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| Sorted by Comment Number | | | | | |
| Note: Comment numbers starting with: "L" denote comments contained in letters received. "S" denote speaker notes from April 8, 2011 public hearing. "W" denote comments from the workshop of April 8, 2011. "W1" denote comments from the workshop of May 17, 2011. "W2" denote comments from the workshop of June 8, 2011. "W3" denote comments from the workshop of June 22, 2011. Example: Comment L-03-02 is the second comment submitted by commenter L-03, and comment S-01-01 is the first comment submitted by commenter S01. | | | | | |
| Comment Number | Commenter | Summary of Comment | CalRecycle Response | Revisions Needed | 1 st 45-day Section/Area |
| L-01-01 | Mark Rutenback, Custom-Pak | We are concerned about the negative impact of defining postconsumer resin (PCR, aka postconsumer material of PCM) as material that does not contain any post-industrial material. The quality of most post-industrial waste is superior to the curbside material. Defining PCR as containing zero post-industrial material will deliver counter-productive results. The current definition does not specify the levels of post-industrial or curbside content and in some definitions even allows for virgin resin. A practical solution would be to limit the percentage of post-industrial content in PRC to a suggested level of 50%. | <p>Neither the PRC nor the proposed regulatory language prohibits the mixing of PCM, post-industrial, or virgin resin to achieve compliance with the mandates. Overall the program's purpose is to help create markets for postconsumer material (see PRC 42300 (j)), not post-industrial material.</p> <p>The proposed definition of Postconsumer Material 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 PCM. However, materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process are not considered PCM.</p> | Revised definition of Postconsumer Material (adopted revised regulations Section 17943(q)). | 17943 (m) |
| L-02-01A | Susan R. Nauman, Hedwin Corporation | The Hedwin Corporation has a patent for the Cubitainer insert which is a light weight, flexible plastic packaging that is shipped contained in a corrugated over pack. The Cubitainer was adopted as an alternative to tight head pails. In 1999, the CIWMB issued a letter of interpretation that concluded the Cubitainer is not rigid packaging. The new wording in the NPRM definition in subsection 17943 (t) (3) (A) would most like exclude our packaging. | <p>Under current practice, container determinations are only made during a certification cycle. The Department is not in a certification cycle, so a determination on a specific container cannot be made. Under the adopted revised regulations Section 17948.2 a product manufacturer, but not a container manufacturer, may request an advisory opinions during the precertification and certification cycle.</p> <p>Statute defines an RPPC as having a "relatively inflexible form" and "capable of maintaining its shape while holding other products" (PRC 42301 (f)). The regulations revisions clarify an RPPC may be 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, but returns to the original shape when holding a product. The definition has been clarified to describe film plastic as not an RPPC.</p> <p>Additionally, any specific container determinations are beyond the scope of this regulatory package. The change is necessary to set the same compliance standard for almost identical containers with the same landfill disposal impacts and capacity for being source reduced or</p> | No change. | 17943 (t) |

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| | | | made of postconsumer material. Both the current and adopted revised regulations specify that a product manufacturer may obtain a waiver for a container under certain circumstances (first 45-day comment version Section 17944.2 and adopted revised regulations Section 17946). The adopted revised regulations clarify that product manufacturers can obtain an advisory opinion during the pre-certification and certification periods (adopted revised regulations Section 17948.2). Neither waivers nor advisory opinions are given to container manufacturers as they are not directly regulated by the Department. | | |
| L-02-01B | Susan R. Nauman, Hedwin Corporation | Unless the language is changed or Hedwin can maintain our original exemption, a packaging that provides significant environmental advantages will be included in the definition of rigid packaging. | See L-02-01A. | No change. | 17943 (t) |
| L-03-01 | Dennis Sabourin, NAPCOR | Products and packaging made with recycled PET require less energy to manufacture than those made from virgin PET. NAPCOR strongly urges the adoption of the existing language in the February 2011 revised regulations regarding resin switching in section 17943 (w)(2)(C)(2)(A), which does not allow "Substituting a different material type for a material which previously constituted the principle material of the container." To allow the substitution of a virgin resin to replace a recycled content resin would be an environmental step backward and a violation of the spirit of the original RPPC law. | The Department's adopted revised regulations are consistent with the request and do not allow resin switching as source reduction (adopted revised regulations Section 17943(af)(2). The commenter makes general statements about energy used for recycled PET vs. virgin PET, so the Department is unable to review and analyze specific information to reach a conclusion. | No change. | 17943 (w) |
| L-04-01 | Parham Yedidsion, Envision Plastics | Life cycle study after life cycle study has unequivocally proven the significant advantages of recycling over the use of virgin and/or bio-resins, in reducing CO2 and greenhouse gas (GHG) emissions, as well as the approximately 40% reduction in overall energy usage for such items. | The commenter makes general statements about life cycle studies, so the Department is unable to review and analyze specific information to reach a conclusion. | No change. | 17943 (w) (1)(C)(2)(A) |
| L-04-02 | Parham Yedidsion, Envision Plastics | The definition in Section 17943 (f) clarifies that "Material Type" is an "individual plastic resin" and not generally described as all plastics combined together. Some hope to evade the RPPC law by resin switching. The California HDPE and PET recycling industry is strongly dependent on strong markets for its activities. To allow for the substitution of a different virgin resin to replace a recycled alternative greatly impacts the stability of the plastics industry in California (and the country). | See L-03-01. | No change. | 17943 (w) |
| L-05-01 | Randy Pollack, Plastic Shipping Container Institute | Changing the definition of an RPPC to consider containers that are not made entirely of plastic could cause implementation problems. The former CIWMB chose to limit the definition due to the ambiguity of the law and the foreseen problems and explained this in the 1994 Final Statement of Reasons. The Department continues to struggle with identifying containers and product manufacturers; has received few completed certification forms from regulated manufacturers; and took very few enforcement actions. To add another 357 million containers (including heat sealed) that will now be subject to the program goes against the legislative intent of the legislation to have a program that is manageable to implement. | The existing regulations create an unlevel playing field. The current regulatory definition includes some containers (for example: buckets with plastic handles and recloseable clamshells) that are regulated, while other almost identical containers (for example: buckets with metal handles and "heat sealed" clamshells) are not regulated. The 1994 Final Statement of Reasons for the original RPPC regulations (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 PRC 42301 (f), the Department adopted revised regulations that still fall within the statutory definition. The proposed amendments are necessary to | No change. | 17943 (t) |

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| | | | <p>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 post consumer materials with a slightly different design.</p> <p>The Department has always asked a very small percentage of product manufacturers to certify RPPC compliance in a given certification cycle. Under the adopted revised regulations, the Department will continue to use this approach, thus allowing this program to remain manageable.</p> | | |
| L-05-02 | Randy Pollack, Plastic Shipping Container Institute | <p>The proposed changes to include containers not made entirely of plastic will significantly impact the use of plastic shipping containers in California. These shipping containers must pass a variety of commercial tests and the proper resin is an essential part to passing those tests. Plastics, unlike other recycled generic materials, have different physical and chemical characteristics. Combining different materials will adversely impact the performance obtained from a homogenous material required for shipping containers.</p> <p>Resin type #2-HDPE, includes two types of material: fractional melt for bottles & injection grade -- the type used for plastic shipping containers.</p> <p>Most municipal recycling programs are focused on dealing with bottles. The material recycled (blow-mold grade HDPE and PET PCR) is used extensively by the bottle makers or other non-performance oriented molded parts such as plastic lumber or flowerpots. This is not the same resin as used in plastic pails.</p> <p>Resin suppliers for plastic pails have tested performance with other than 100% virgin material. The tests confirmed that introducing non-homogenous material to the process adversely impacted performance, such as weaker, more brittle containers that are unable to comply with the necessary specifications & requirements of industry & regulatory agencies. (Provided tests results.)</p> <p>Incorporation of 25% blow-mold grade PCR isn't possible with today's equipment used in the pail industry. Even if new equipment were purchased at a significant cost, consistent sealing of lids with containers would be impossible due to different viscosity & molecular weight distribution of PCR from blow-molded bottles vs. pail resin.</p> | <p>Manufacturers are not required to comply with the RPPC regulations through use of the 25% post- consumer material option. They may comply with another of the compliance options included in adopted revised regulations sections 17944 and 17944.1. See also response L-05-01. If a manufacturer cannot utilize PCM in a particular container, they may also benefit by utilizing credit as described under PRC 42310.3, alternative compliance methods, which appears to have been added, in part, to help deal with the type of situation described.</p> | No change. | General |
| L-05-03 | Randy Pollack, Plastic Shipping Container Institute | <p>Pail manufacturers have also found that there is not enough recycled HDPE or PP of the quality and consistency to meet the California requirements of 25%.</p> | <p>See Comment L-05-02.</p> <p>According to the American Chemistry Council's (ACC) and Association of Plastic Postconsumer Recyclers' (APR) <u>2010 United States National Post-consumer Bottle Recycling Report (October 2011)</u> , nearly 1 billion pounds of high-density polyethylene (HDPE, #2) and 35 million pounds of polypropylene (PP, #5) bottles were recycled nationwide..</p> <p>The ACC's <u>2009 National Report on Postconsumer Non-Bottle Rigid Plastic Recycling</u> (Moore Recycling Associates, February 2011) indicates</p> | No change. | 17943 (t) |

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| | | | <p>that 83 million pounds of HDPE and 10 million pounds of PP were recycled in 2009. The recycling of buckets, pails and tubs is reported by recyclers as non-bottle rigid plastic.</p> <p>Per CalRecycle's 2010 Beverage Container Recycling Report, over 51 million pounds HDPE from CRV bottles were recycled in California alone.</p> <p>The Economic and Fiscal Impact Statement (EFIS) estimated that the proposed amendments to the RPPC regulations would require only 10.4 million pounds of HDPE to meet the changes in the regulations' specifications (including the alternative method compliance). The EFIS is only required to consider California specific data. Per CalRecycle's report, the 51 million pounds of California recycled HDPE is enough to provide 23.6 percent postconsumer content in all RPPCs made with HDPE without any container using source reduction or any other compliance method. While, the amount of PP was not individually determined within the EFIS, the total amount of resin types #3 through #7 needed to meet changes in the regulations specifications is less than 4 million pounds.</p> <p>Thus, each of the three data sets shows there is more than enough HDPE and PP postconsumer material available to fulfill the obligations of the changes in the RPPC regulations. Additionally, more resin types can be used to offset some possible shortages of specific resin types. During a discussion, at the October 5, 2011 Workshop, of the availability of postconsumer HDPE for making pails. Mr. Howard Norton, Norton Packaging, inc. (a California manufacturer of buckets and pails) stated that his company was mixing recycled low density polyethylene (LDPE) with recycled HDPE along with the virgin HDPE in making of buckets--"there is a shortage of high density, but we are mixing the two and not having any problems with it." [Page 43 of transcript].</p> <p>A revised cost estimation based on resins prices at the end of 2011, found that total statewide program costs increased from \$3.49 million in 2009 to \$3.55 million. The weighted-average cost for the 672.7 million impacted containers increased from 0.52 to 0.53 cents per container.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13 and the updated Economic and Fiscal Impact Statement section, page 35.</p> | | |
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| L-05-04 | Randy Pollack, Plastic Shipping Container Institute | <p>The EFIS does not include costs to businesses and also does not take into account the potential millions of dollars in costs involved to obtain new machinery to comply with the law.</p> <p>The EFIS also does not account for production costs for all pails produced by container manufacturers. This is necessary because it is virtually impossible to track/control the portion of pails that are sold in California.</p> | <p>To prepare the EFIS in 2008 the Department conducted a survey of approximately 1,500 container and product manufacturers, plastic processors and other stakeholders. The RPPC regulations have long recognized the problems of accounting for California sales. Product manufacturers have the option of reporting California-only sales or all RPPCs sold in the United States. The department received a total of 95 responses to the survey. Only 30 manufacturers provided fairly complete responses to the cost questions. As a result the responses were considered to be statistically unreliable for the purposes of estimating costs, but could be used to indicate the portion of the group incurring various types of costs. The majority of the manufacturers that responded to the Department's 2008 RPPC survey stated that they did not expect to need new equipment to comply with the amended regulations. About half of the manufacturers who responded that they expected an increase in capital costs identified molds as the equipment that they might have to purchase. The Department in its analysis determined that the equipment most likely to be purchased will be jigs, dies and molds (Class #30.21) which has an asset life of three and a half (3½) years. As a result, neither capital expenditures nor associated depreciation expenses are used to determine the cost impact on California-based manufacturers.</p> <p>The most recent (2007) Census of Manufacturing (US Department of Commerce) data indicates that the average plastic bottle manufacturing plant (NAICS code 326160) spends \$1.3 million annually on new capital equipment. The Department accounted for new capital equipment in the EFIS by adding to the costs of postconsumer material. The Department believes that 40 cents added cost for each pound of postconsumer material would more than cover any added capital expenditure incurred by container and product manufacturers. While, Government Code section 11346.3 (See Comment L-05-06) only requires the Department to assess the cost impacts of California businesses and individuals, the EFIS estimated costs imposed on non-California manufacturers of RPPCs. California laws apply only to products in RPPCs sold or offered for sale in California, not to products in RPPCs sold or offered for sale elsewhere.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35.</p> | No change. | Economic Analysis |
| L-05-05 | Randy Pollack, Plastic Shipping Container Institute | <p>The economic analysis (EFIS) failed to discuss whether postconsumer material is available to support this program and the costs involved in obtaining the material.</p> <p>Provided 2009 National Report on Postconsumer Non-Bottle Rigid Plastic Packaging (Prepared for the American Chemistry Council by Moore Recycling Associates, February 2011).</p> | <p>See L-05-03 for a discussion of the availability of postconsumer material in both California and the United States. Table 6 of the Economic and Financial Impact Analysis provides a comparison of virgin and postconsumer resin prices from several sources in 2009. On a weighted-average basis, the actual price of postconsumer material is approximately 30 cents per pound less than virgin resin. With the exception of the "no-resin switching to achieve source reduction compliance" amendment, the EFIS costs were estimated by assuming that postconsumer material was 10 cents per pound more expensive than virgin resins, so that cost estimates in the EFIS are conservative.</p> | No change. | Economic Analysis |

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| | | | Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35. | | |
| L-05-06 | Randy Pollack, Plastic Shipping Container Institute | The Economic Analysis (EFIS) by the Department fails to consider the significant fiscal impact on some manufacturers who will face lawsuits for voiding current contracts so that they can manufacture containers compliant with the law. | <p>The EFIS only needs to consider direct costs associated with complying with the regulation (not indirect speculative costs related to lawsuits).</p> <p>The State Administrative Manual (SAM) Section 6603 refers to Government Code (GC) Section 11346.3.</p> <p>GC 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:</p> <p>(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.</p> <p>(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.</p> <p>(b)</p> <p>(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:</p> <p>(A) The creation or elimination of jobs within the State of California.</p> <p>(B) The creation of new businesses or the elimination of existing businesses within the State of California.</p> <p>(C) The expansion of businesses currently doing business within the State of California.</p> <p>(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political</p> | No change. | Economic Analysis |

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| | | | <p>Practices Commission.</p> <p>(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.</p> <p>(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.</p> <p>Definition of "Cost impact" in the Administrative Procedures Act (GC 11342.535) refers only to direct costs.</p> <p>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.</p> <p>Although the Department is not required to prepare an additional Economic and Fiscal Impact Study after the start of the formal rulemaking process, further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35.</p> | | |
| L-05-07 | Randy Pollack, Plastic Shipping Container Institute | The proposed regulations do not address an adequate time period for the implementation of these revisions. The process of changing containers can take up to five years. | The proposed effective date of these regulations is January 2013, the start of the first full calendar year after the regulations are approved. 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 January, 2013. The pre-certification process provides product manufacturers with one year's advance notice that they have been identified as a product manufacturer and <u>may</u> be required to certify compliance for the subsequent calendar year. 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 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 EFIS. | No change. | 17945.1 |
| L-05-08 | Randy Pollack, Plastic Shipping Container Institute | The proposed regulation eliminates language that "Material Type" does not mean individual plastic resins. The proposed change eliminates a company's ability to switch resins to achieve source reduction, and goes against the fundamental policy objectives of the Department to use less. | Background: PRC Section 42301(j): (1) "Source reduced container" means either of the following: (A) A rigid plastic packaging container for which the | No change. | 17943(f) and 17943 (w) |

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| | | | <p>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.</p> <p>(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:</p> <ul style="list-style-type: none"> (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. <p>(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:</p> <ul style="list-style-type: none"> (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. <p>Current 14 CCR Section 17943(b) (14) "Material Type" means broad feedstock categories such as paper, glass, plastic or aluminum. "Material type" does not mean individual plastic resins.</p> <p>Proposed 14 CCR Section 17943(i) "Material Type" for purposes of this Article means feedstock categories, such as, but not limited to, paper, glass, or aluminum and individual plastic resins.</p> <p>Analysis: Based on statutes existing during, and used in several sections of, the legislation that created the Rigid Plastic Packaging Container program, the definition of "Material Type" should have included individual plastic resins. 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:</p> <ul style="list-style-type: none"> (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. | | |
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| | | | <p>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)</p> <p>(b) A "7" shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.</p> <p>The Rigid Plastic Packaging Container statutes do reference PRC Section 18015. PRC Section 42301(i) defines RPPC "Recycling rate" to mean 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:</p> <ol style="list-style-type: none"> (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. (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. <p>PRC Section 42301(l) also indicates that "PETE" polyethylene terephthalate should be defined consistently with PRC Section 18015.</p> <p>For the above reasons, Department staff has determined that it was the intent of the legislature to include individual plastic resins in the definition of "Material Type" and that the definition for "Material type" in regulations should be changed to be more consistent with PRC Section 18015. This 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 Section 17943 (af).</p> <p>Both the Economic and Financial Impact Analysis and California Environmental Quality Act Initial Study and Negative Declaration concluded that changing the regulation to eliminate resin switching would likely result in use of a different compliance option, which would increase the use of postconsumer resin and would reduce the amount of carbon dioxide equivalents in avoided GHG emissions by directly reducing the amount of virgin resin used to manufacture through the substitution of postconsumer resin to meet the 25 percent postconsumer compliance option. The studies examined indicate 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</p> | | |
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| | | | <p>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.</p> <p>Based on product and container manufacturer comments, the reduced container weights reduce total product weights resulting in transportation cost savings. This indicates that even if resin switching were not allowed as a compliance option, manufacturers will continue to use lighter resins. Resin switching does not hold back the technology to separate and recycle specific resins.</p> <p>Nothing in the proposed regulations prohibits product manufacturers electing to switch resins for weight or cost reasons as long as another compliance option is used. So while product manufacturers may elect to switch resins (e.g., for weight or cost reasons), they will no longer get "credit" towards compliance with the RPPC law but have to seek compliance using another option.</p> <p>Based on the Department's waste management experience and comments received from plastic recyclers/reprocessors, allowing manufacturer compliance through resin switching will reduce the availability of postconsumer material and have an adverse effect on recycling of RPPCs and further reduce the amount of postconsumer material available for other manufacturers to demonstrate compliance. Without recycling opportunities the increased amounts of the #3 through #7 resins will mean more RPPCs being disposed in California's landfills or exported out of California and the United States.</p> <p>The adopted revised regulations still allow source reduction through other methods and are therefore consistent with the Department's fundamental policy objectives to use less and recycle more. 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.</p> <p>Additionally, per PRC 42310, source reduction is only one of five options for compliance. Other options include being made of 25% PCM, having a recycling rate of 45%, being reusable or refillable, or being a reusable floral container.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option section, page 4.</p> | | |
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| L-05-09 | Randy Pollack, Plastic Shipping Container Institute | The Department claims in the ISOR that within the regulated community the term material type is used to mean both broad categories (e.g. paper and glass) and individual resin types. What authority was relied on for this statement and who in the regulated community was asked and supports this definition? | The Department receives many inquiries regarding containers such as the one included in L-02-01 and L-02-02, above. The companies request containers be exempt based on the material type definition because the outer container is cardboard and only the inner container is an RPPC. The definition of "material type" must also be consistent with the definition of "source reduced container" as the term is used in adopted revised regulation Section 17943(af)(2)(A). Since the adopted revised regulations do not allow resin switching as source reduction, the definition of "material types" must include individual plastic resin types so the regulations are internally consistent. See L-05-08 During the rulemaking process comments at public workshops and meetings and written comments included herein indicate who does or does not support the revised definition. | No change. | 17943(f) and 17943(w) |
| L-05-10 | Randy Pollack, Plastic Shipping Container Institute | The elimination of resin switching as a means of source reduction will make it virtually impossible for plastic container manufacturers to comply with the rigid plastic packaging container law. | See L-05-02 | No change. | 17943 (w) |
| L-05-11 | Randy Pollack, Plastic Shipping Container Institute | Studies have shown that a reduction in plastic used in a container has a significant impact on the reduction of greenhouse gas (GHG) emissions during the manufacturing & transportation process & reduction of materials going to landfill. | The Department evaluated many plastics studies as they relate to containers. One specific study, Franklin and Associates' LCI studies, conducted in 2010 and 2011, finds that there is a differential in GHG impacts that result from manufacturing each of the different plastic resins. However, LCIs do not evaluate the GHG impacts of manufacturing products, but rather the production of pellets. Additionally, Department staff calculated the estimated GHG impacts of the adopted revised regulations and found that they will achieve a reduction in GHG emissions under each compliance option. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, greenhouse gas emissions related to resin switching to comply with source reduction requirements section, page 6. | No change. | 17943 (w) |
| L-05-12 | Randy Pollack, Plastic Shipping Container Institute | According to the Economic Analysis (EFIS), 78.9 million containers would no longer be allowed to switch resins as a means to achieve source reduction. In the case of source reduction by using the same resin as the non-source reduced pail (HDPE to HDPE), over 18 million lbs. (or 10%) CO2 emissions can be potentially reduced. | See L-05-01 and See L-05-11 | No change. | Economic Analysis |
| L-05-13 | Randy Pollack, Plastic Shipping Container Institute | According to Cradle-to-Gate Life Cycle Inventory of Nine Plastic Resins and Two Polyurethane Precursors (ACC, December 2007), each pound reduction of polypropylene (PP) results in a 1.34 pound reduction in CO ₂ emissions. Resin switching from HDPE to PP would result in a 34 million pound reduction of CO ₂ emissions. Each pound reduction in HDPE results in a 1.48 pound reduction in CO ₂ emissions. Source reduction using a 10 percent reduction in the weight of HDPE would result in an 18 million pound reduction in CO ₂ emissions. | A GHG impact analysis of resin switching was not conducted because the adopted revised regulations prohibit this option to achieve compliance. Moreover, the Department is not aware of a study that evaluates all the containers regulated by the RPPC Program, examines the entire life cycle of the products, uses the same functional units, same system boundaries, etc. that would allow the Department to perform a complete GHG analysis on all RPPCs. In regard to the California Global Warming Solutions Act of 2006, staff notes the AB 32 Scoping Plan states that "increasing waste diversion from landfills provides additional recovery of recyclable materials that will directly reduce GHG emissions. Recycled materials that are re-introduced into | No change. | Economic Analysis |

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| | | | <p>the manufacturing process provide energy value back into the process, and indirectly reduce the need for virgin materials extraction." In addition, Franklin's 2010 report <i>Life Cycle Inventory of 100% Postconsumer HDPE and PET Recycled Resin from Postconsumer Containers and Packaging</i> concludes that manufacturing processes using recycled plastics achieve greater avoided GHG emissions than virgin resins. Thus, CalRecycle's RPPC Program requirements to use source reduction (other than resin switching) or 25% postconsumer recycled content, or refilling as a means of compliance directly contribute to the reduction of GHG emissions in the State and support AB 32's Waste and Reduction strategy.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, greenhouse gas emissions related to resin switching to comply with source reduction requirements section, page 6.</p> | | |
| L-05-14 | Randy Pollack, Plastic Shipping Container Institute | Eliminating resin switching from the regulations clearly violates the legislative intent of reducing California's greenhouse gas emissions through the passage of the California Global Warming Solutions Act of 2006 (AB 32). | See L-05-11 and L-05-13. There are multiple legislative 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 intent language from other laws. | No change. | 17943 (w) |
| L-06-01 | Brock Wanless, Illinois Tool Works (ITW) | The existing definition of "postconsumer material" is very clear to the general public in terms of what types of material is and is not considered "postconsumer material" for purposes of the RPPC certification. ITW acknowledges the Department's attempt to reconcile the statutory definition of "postconsumer material" with its RPPC rules. However, deleting the clarifying language in the definition for all intents and purposes undermines the legislative intent of AB 1334 to include such material as "postconsumer material" and which allows "horizontal averaging" of recycled plastic to meet alternative methods of RPPC compliance. The ISOR assumes that only waste plastic generated from the postconsumer municipal waste stream can be destined for disposal and that all waste plastics generated from the manufacturing sector is suitable for and is in fact recycled due to market-demand. CalRecycle should reinsert the provisions in the definition of "postconsumer material" that allows for the use of specified waste plastics that come from sources other than the individual consumer. This definition would be consistent with the definition of "postconsumer material" that was in the original RPPC regulations. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943(q)). | 17943 (m) |
| L-06-02A | Brock Wanless, Illinois Tool Works (ITW) | ITW requests the definitional change of RPPC to include containers with metal handles be removed. Since the metal handle is typically an integral part of large-container designs, they should continue to be excluded if a metal handle is in fact an integral and necessary part of the large-container design. | See L-05-01 | No change. | 17943 (t) |
| L-06-02B | Brock Wanless, Illinois Tool Works (ITW) | Has the Department considered the impact this requirement may have on the U.S. Department of Transportation's requirements for containers that ship hazardous materials that require metal handles? | Rigid plastic containers for hazardous materials are exempt from the RPPC program per statute (PRC 42340 (c) and (d)). | No change. | 17943 (t) |

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| L-06-03 | Brock Wanless, Illinois Tool Works (ITW) | It is our understanding that the current statute and regulations would not allow product manufacturers to switch resins to achieve compliance with the law. It is unclear if the new revised regulations authorize switching resin types to achieve source reduction. Please clarify the intent of this subsection. | See L-03-01. | No change. | 17943 (w) |
| L-06-04 | Brock Wanless, Illinois Tool Works (ITW) | ITW fully supports the addition of a precertification process proposed in section 17945.1. | Comment noted. Commenter supports the precertification process in adopted revised regulation section 17945.1 | No change. | 17945.1 |
| L-06-05 | Brock Wanless, Illinois Tool Works (ITW) | ITW strongly objects to the process recommended in Section 17945.1 (b) that places companies previously found not in compliance, but took effective actions to come into compliance, high on the hierarchy for repeated certification processes. These companies should be deemed fully compliant and placed into the population of companies to be selected randomly. | 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. | No change. | 17945.1 (b) |
| L-06-06 | Brock Wanless, Illinois Tool Works (ITW) | ITW fully supports this additional requirement for container manufacturers to be held to the same standard of liability for certification, under penalty of perjury, for submittal of true and correct information on container manufacturer certifications. | Comment noted. Commenter supports adopted revised regulation Section 17945.4, regarding container manufacturer certification information. | No change. | 17945.4 |
| L-06-07 | Brock Wanless, Illinois Tool Works (ITW) | There is no statutory requirement that companies seek a waiver for a period of 12 months for new products packaged in RPPCs prior to compliance with the law. Section 17946, which creates a waiver process, should be deleted. | The waiver for newly introduced products is included in statute (PRC 42330 (c)). In accordance with PRC 42325 (b), Section 17946 of the regulations provides the process for petitioning the Department for such a waiver. | No change. | 17946 |
| L-06-08 | Brock Wanless, Illinois Tool Works (ITW) | The failure of a product manufacturer to submit a certification by the due date (CCR 17945.2) imposes a fine of \$1,000 to \$50,000 according to the criteria set forth in Subsection (e). ITW recommends that the Department add language requiring notification of the product manufacturer by certified mail within 10 days after the due date, to enable each company to be informed prior to reaching the 30 day threshold that then begins the fine and penalty assessment. | The Department routinely sends reminder notices as part of its standard business practices for Department programs, and penalty notices and reminder notices are sent as part of the Department's standard accounting process. | No change. | 17949 (d) |
| L-06-09 | Brock Wanless, Illinois Tool Works (ITW) | These regulations should not limit the authority of an Administrative Law Judge (ALJ) to modify or reduce any fine or penalty. We recommend deletion of the documented evidence provision and defer to the governing regulations for the ALJ to make a final determination based on his/her evaluation of information provided in the hearing. It should be clearly stated that the Department has ultimate authority to impose no fine or penalty at their discretion. | The regulations do not impair or expand upon any authority an ALJ 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 ALJ over the Department in these matters | No change. | 17949 (h) |
| L-06-10 | Brock Wanless, Illinois Tool Works (ITW) | The sheer volume of text being deleted, added and reformatted from the former "question and answer" format makes analysis of the regulations difficult. ITW requests assurance from the Department that they be given another full 45 day comment period to review the regulations once they are "cleaned up". | The Department provided a second 45-day comment period. | No change. | General |

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| L-07-01 | Tim Shestek representing 10 orgs | The proposed change to the definition of postconsumer material runs contrary to the Department’s Strategic Directive 3 (SD 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. The RPPC regulations should encourage to the maximum extent possible, the use and reuse of any plastic material that may be “commonly disposed and not commonly reused”. The proposed change reduces the number of full time jobs in material recovery. | See L-01-01. 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. | No change. | 17943 (m) |
| L-07-02 | Tim Shestek representing 10 orgs | The proposed change to the definition of reuse to exclude containers that store the original product sold in the container. This proposed change would unnecessarily impact many RPPCs that are currently used to package and store products over the useful life of the product. Expanding the scope of regulated containers to include “storage cases” is well beyond the intent of the enacting statute (PRC 42301 (d)) which clearly defines a “reusable package” to mean 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. | <p>–“Reusable Packaging” is defined in Title 14, California Code of Regulations (14 CCR) Section 17943(z). Product manufacturers are concerned that the proposed regulations change the definition of reuse to exclude containers that permanently store the original product sold in the container. There is no intent evidenced to exclude certain types of reusable packages (which would also otherwise be a component of solid waste generated in the state). 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. 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. Therefore, the revised regulation is clarifying 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.</p> <p>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).</p> <p>The change is not intended to exclude products listed from being included in the definition of “reusable container”, so long as those products are removed and returned to the package five or more times.</p> | No change. | 17943 (s) |

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| | | | <p>The change adds replacement products identical to the original item type to the definition of “original product”.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, reusable rigid plastic packaging containers section, page 9.</p> | | |
| L-07-03 | Tim Shestek representing 10 orgs | The proposed regulatory change to include containers or packages that are “designed to be folded or collapsed into a more compact form when not holding a product” is inconsistent with the statutory definition that clearly states the package must have “ a relatively inflexible shape or form.” The proposed change would add to the Department’s workload and impose regulatory burdens on product manufacturers never intended to be burdened. | See L-02-01A. The Department has always asked a very small percentage of product manufacturers to certify RPPC compliance in a given certification cycle. Under the adopted revised regulations, the Department will continue to use this approach. | No change. | 17943 (t) |
| L-07-04 | Tim Shestek representing 10 orgs | The proposed change to the definition of “Source Reduced Container” would limit the ability of the product manufacturer to choose container types that are more resource efficient, while also maintain product integrity and package functionality. For example, a product company that elects to switch from a certain resin type to another and in doing so can demonstrate the package is more resource efficient would be penalized under this proposed change. | See L-05-08. | No change. | 17943 (w) |
| L-07-05 | Tim Shestek representing 10 orgs | The proposed regulations change the focus on demonstrating compliance for source reduced containers to the product manufacturer. The law has always focused on reducing the amount of materials in containers and the proposed changes to the definition of Source Reduced Container would discourage the use of the most streamlined source reduced container. The unintended consequence would penalize product manufacturers for using the least amount of material in the first place. | See L-05-08 The existing regulatory definition of manufacturer or product manufacturer in Section 17943(b) means the producer or generator of a product which is sold and the definition of product manufacturer in adopted revised regulations Section 17943(t) clarifies that the product manufacturer is responsible for complying. The addition of the word “product” before the word manufacturer in the adopted revised regulations Section 17943 (af)(1)(A) does not change the meaning of manufacturer from the existing regulations for purposes of source reduction and does not change the how source reduction is determined under the adopted revised regulations. | No change. | 17943 (w) |
| L-07-06 | Tim Shestek representing 10 orgs | Technological waivers have been granted in the past for certain containers where the products require higher purity have a long shelf life, and there is a possible chemical reaction of the container with the product. Proposed Section 17944 (a)(1)(B) should be revised to allow waivers for technological infeasibility and conditions could be specified under which these waivers would be allowed. | The adopted revised regulation change is consistent with PRC 42330 (a)(2)that allows for a product manufacturer to seek a waiver from the 25% postconsumer material content compliance option if it is technologically infeasible to achieve 25% postconsumer material compliance option. The adopted revised regulation is also consistent with statute because it does not exempt such containers from other compliance options. The waiver process contemplated in statute is not a complete waiver from program compliance. Product manufacturers may submit information on technological feasibility to be considered if they may be subject to a penalty. The product manufacturer may also submit information on their good faith effort to comply for the Department to consider before a penalty is imposed. | No change. | 17944 (a)(1)(B) |

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| L-07-07 | Tim Shestek representing 10 orgs | Proposed Subsection 17945.1 (b) seeks to establish a prioritization process by which the Department will select those product manufacturers required to certify compliance with the regulations. The regulations should specify that a company could be subject to a certification request no more frequently than every five years. Product manufacturers that have reached a stipulated agreement could be selected again. | See L-06-05. | No change. | 17945.1 (b) |
| L-07-08 | Tim Shestek representing 10 orgs | Proposed Section 17945.2 (c) requires a manufacturer to provide a certification within 90 days after receiving the request from the Department. The timeframe for response should be changed to 120 days, with the option for an additional 30 days. | A Product Manufacturer will be notified that they may be required to certify in the pre-certification cycle, about 2 years before a certification is due. They will be notified that they have been selected to certify about one year prior to the certification due date. Product manufacturers are required to submit data for the prior calendar year (measurement period) by April 1 of the following calendar year. Adopted revised regulations section 17945.2 (d) allows a product manufacturer to request a 30-day extension for cause, giving them 120 days. Giving product manufacturers additional time would limit staff time to review the certifications, given the overlapping precertification and certification cycles. | No change. | 17945.2 (c) |
| L-07-09 | Tim Shestek representing 10 orgs | Proposed Section 17945.3 allows manufacturers to show source reduction based on concentrating the product or based on a combination of concentrating the product and reducing the weight of the container holding the product. Companies that introduce a new-to-market concentrate are in a sense penalized because they did not start out with a non-concentrated version. In order to create more incentives for concentrated products and to promote this means of sustainable product design, we ask that the regulations be revised to allow credit for products that are introduced as concentrates. | Statute (PRC 42301 (j)(1)(B)(ii), limits the Department's ability to allow a 10% source reduction credit for a newly introduced product. | No change. | 17945.3 |
| L-07-09B | Tim Shestek representing 10 orgs | This section also makes a reference to "clamshell" container, yet this word is not clearly referenced anywhere else in the regulations. We suggest that this term be deleted to avoid confusion. | "Clamshell" is a commonly used industry term and is used in adopted revised Section 17945.3 (c)(2) as one of the examples. | No change. | 17945.3 (c)(2) |
| L-07-10 | Tim Shestek representing 10 orgs | The Container Manufacturer Certification Information within proposed Section 17945.4(f) seems to assume knowledge by the president or vice president of the information being presented. In large part, however, these certifications depend on information submitted by third parties outside the manufacturer. Suggested revised language: "I certify under penalty of perjury under the laws of the State of California that based on information and belief formed after reasonable inquiry, the statements and information in the document and all of the attached materials are true and correct". | Based on this input and further analysis, the certification statement was revised to include the phrase "to the best of my knowledge and belief." This revision will provide consistency within the RPPC program, as well as with other Department programs that have a similar penalty of perjury statement | Revised all sections and subsection throughout the adopted revised regulations to ensure consistent use of revised language for all certification submittals. | 17945.4 (f) |
| L-07-11A | Tim Shestek representing 10 orgs | Proposed Section 17946 specifies various situations in which waivers can be granted. A general waiver of two years should be added as a new section (f) for the products in an acquisition. | If any of the acquired products are "newly introduced" to California, they could qualify for a one year waiver as described under PRC 42330 (c); a two year waiver is beyond what is authorized by statute. See L-06-07. | No change. | 17946 |
| L-07-11B | Tim Shestek representing 10 orgs | The current regulations contain a provision (proposed Section 17944.2 (a)(4)) that automatically provides a waiver of 12 months for newly introduced products. This provision should be retained. | See L-06-07. | No change. | 17946 |

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| L-07-12 | Tim Shestek representing 10 orgs | The proposed regulations (proposed Section 17946.5(b)(2) would require manufacturers of insecticides, fungicides and rodenticides or hazardous waste to submit a request for an exemption, even though the statute (PRC 42340 (c) and (d) specifically exempt these products from the regulations. These products are easily recognizable and discernable for other products by the EPA registration number which is required to be displayed on the product container. This additional paperwork burden is unnecessary, conflicts with existing statute and should be deleted. | Statute (PRC 42340) exempts products such as insecticides, fungicides and rodenticides from RPPC requirements. Based on experience with product manufacturers not specifying which RPPCs were exempt and not readily identifiable information on the container for staff to rely on to make a determination, the adopted revised regulations (Section 17946.5 (b) include a brief reporting process for product manufacturers to notify the Department for which RPPCs it is claiming exemptions to account for all the product manufacturer's container lines as the Department is making compliance determinations. | Clarified wording of Section 17946.5 (b). | 17946.5 (b)(2) |
| L-07-13 | Tim Shestek representing 10 orgs | The Advisory Opinions (proposed Section 17948.2) language establishes an unworkable process for product manufacturers to ask the Department for an advisory opinion as to whether a specific container is potentially subject to the regulations. As drafted, a product manufacturer can only ask for an opinion when the product manufacture receives notice from the Department that it is required to certify compliance. | The Department will be developing internet and other tools to help all manufacturers to determine if a product container would be subject to the RPPC requirements. The proposed language provides a product manufacturer an opportunity to receive an advisory opinion in both the pre-certification process and the compliance certification process. Regulations (Section 17945.1) now allow for such a request upon receipt of the precertification notice, and, for containers introduced after that time, upon receipt of the certification notice. This limitation on requests for formal advice is done to contain the workload the department would otherwise have if any company could request such advice at any time | Revised 17948.2 to further clarify that the advisory opinions can be obtained at two points during the certification process. | 17948.2 (a) |
| L-07-14 | Tim Shestek, representing 10 orgs | The proposed regulations will become effective once approved by the Office of Administrative Law. Without additional lead time, manufacturers will have little or no time to change packaging specifications on the thousands of new items that would be subject to potential certification. These regulations should provide lead time of at least several years before becoming effective. These proposed changes could impact hundreds of product lines and may require companies to alter the design of a particular package or packages. | See L-05-07 | No change. | 17945.1 |
| L-07-15 | Tim Shestek representing 10 orgs | Efforts to review regulations for their impact on business, reduce government red-tape and even eliminate in-effective regulations are occurring both here in California and at a national level. California cannot expect to return to economic prosperity, if the state continues to promulgate regulations that add to the cost of doing business and hinder economic growth. | This rulemaking revises existing regulations, in accordance with existing statute, it was found to have a minor economic impact on product manufacturers and consumers of RPPCs. The original 2010 EFIS estimated the expected impact for the typical manufacturer is \$1,749 per year and for small businesses less than \$200 per year. The typical consumer will experience an increased cost of 9 cents per year. For about 45 manufacturers who will be able to demonstrate compliance through the use of California postconsumer material in other products there will be a cost savings. For the typical manufacturer the savings are estimated to be \$562 per year. For a small manufacturer the expected savings is \$16. The updated EFIS shows that total costs for manufacturers and consumers increased by \$100,000: from \$3.5 million to \$3.6 million. Total costs for all California manufacturers increased \$16,000 per year. The typical consumer will experience an increased cost of 9.5 cents per year. Although the Department is not required to prepare an additional Economic and Fiscal Impact Study after the start of the formal rulemaking process, further discussion is provided in the Final | No change. | Economic Analysis |

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| | | | Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35. | | |
| L-08-01 | Mark Murray, Californians Against Waste | A primary objective of the RPPC statute was and remains to create market-based incentives to support those plastic containers with the most efficient and effective recycling. Another objective is to support the development of California end use markets for recycled plastic. PET and HDPE containers have emerged as the only two types of RPPC material with universal recycling accessibility. It appears that most of the proposed changes move in the direction of simplifying and clarifying existing regulations consistent with statute, which we support. | Comment noted. Commenter supports adopted revised regulations package. | No change. | General |
| L-08-02 | Mark Murray, Californians Against Waste | We are strongly supportive of the proposed update/correction to the definition of "Material Type". | Comment noted. Commenter supports adopted revised definition of material type. | No change. | 17943 (f) |
| L-08-03 | Mark Murray, Californians Against Waste | We strongly support that proposed update/correction to the definition of "Source Reduction" which we believe is now more consistent with statute. Even if the Department were to determine that resin material type 'swapping' was authorized, the statutory language in Section 42310 (j)(2) (C) would simply not allow a manufacturer to meet the source reduction option of the law by switching from recyclable HDPE or recyclable PET to any other resin material type that is not HDPE or PET. | Comment noted. See response to L-05-08 for Department's statutory basis for not allowing resin switching as a source reduction compliance option. Commenter supports adopted revised definition of source reduced container. | No change. | 17943 (w) |
| L-08-04 | Mark Murray, Californians Against Waste | With one exception, we are supportive of the proposed changes to the definition of "postconsumer material" which effectively returns the definition to the statutory definition. We believe the definition should be modified to read: "Postconsumer Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use product life cycle. Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process. Rigid plastic packaging containers holding obsolete or unsold products and post-industrial scrap that is commonly disposed, and not commonly reused within an original manufacturing process, shall be considered postconsumer material when use as feedstock for new products. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| L-09-01 | Rick Zirkler, CarbonLITE | CarbonLITE's new facility will produce FDA approved bottle grade PET from postconsumer PET bottles, collected through curbside programs and deposit collection centers. The end product is then sold to be used as a direct substitute for all virgin material in all PET applications, including food grade packaging. CarbonLITE supports the RPPC law as an effective means for diverting rigid plastic packaging containers from California's landfills, bringing them back as recycled content and meeting or exceeding the State's diversion mandate. | Comment noted. Commenter supports use of postconsumer PET. | No change. | General |
| L-09-02 | Rick Zirkler, CarbonLITE | CarbonLITE supports and endorses staff recommendation to eliminate language that allows for compliance with RPPC under the source reduction option simply by switching from one resin type to another. | Comment noted. Commenter supports adopted revised regulation removal of resin switching as source reduction. | No change. | 17943 (w) |

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| L-09-03 | Rick Zirkler, CarbonLITE | CarbonLITE supports and endorses staff recommendation that would amend the current regulatory definition of “postconsumer material” by deleting the language that permits internally generated plant scrap (what we consider “post-industrial”) to be considered “postconsumer material.” | Comment noted. Commenter supports adopted revised definition of postconsumer material. | No change. | 17943 (m) |
| L-10-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The Association of Plastic Recyclers refers us to their initial comments on September 4, 2007, when revisions were first proposed, and which are part of the official record regarding RPPC revision and update, as well as our follow-up comments of November [sic - actually October] 2007. | The comments were submitted as part of the informal rulemaking process. The Department has included responses to the comments in the formal rulemaking package. The letters are numbered L-10A and L-10B. | No change. | General |
| L-10-02 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR supports and endorses staff recommendation to eliminate language that allows for compliance with RPPC under the Source Reduction option by switching from one resin type to another. Allowing resin switching would result in: providing a compliance option for a container destined for landfill, it is not considered source reduction if changes adversely affect the ability of the container to be recycled or made of postconsumer material, compliance through resin switching eliminates the need for any recycled content, and without an incentive to provide compliance through current options, the incentive to expand the recycling infrastructure would be negligible. | Comment noted. Commenter supports adopted revised regulation removal of resin switching as source reduction. | No change. | 17943 (w) |
| L-10-03 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR generally supports the staff recommendation that would amend the current regulatory definition of “postconsumer material” by deleting language that permits internally generated plant scrap, historically referred to as “post-industrial” to be considered postconsumer material. APR would support the following language that does not permit intentionally generated scrap to be classified as postconsumer should that material not subsequently be reused as feedstock for new products. “Postconsumer Material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle. Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process. Rigid plastic packaging containers holding obsolete of unsold products and post-industrial scrap that is commonly disposed, and not commonly reused within an original manufacturing process, shall be considered postconsumer material when used as feedstock for new products. | See L-01-01. | Revised definition of Postconsumer Material (Adopted revised regulations Section 17943(q)). | 17943 (m) |
| L-10A-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The APR proposes to require that certifications be submitted each year by all parties that must comply with the RPPC law. The current proposal for selecting companies to audit should be abandoned in favor of a lottery system for the inspection of a smaller subset of the companies who filed annual certifications. | While statute does not preclude requiring an annual certification by all product manufacturers, given the large (and frequently changing) number of product manufacturers, the Department has historically selected only a small percentage of product manufacturers to certify each year and plans to continue in this manner after the revised regulations are approved. | No change. | 17945.2 |

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| L-10A-02 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The term “product” is used as a basis for compliance with the source reduction provisions of the program but it is not defined in the regulation or the statute. The staff’s proposals seem to imply that the brand name defines the product, thereby ignoring significant differences in size, shape, design, grade and flavor or each container. APR has suggested definitions for “generic product”, “generic product line”, “brand-specific product”, “product” and “brand-specific, rigid plastic packaging line”. The suggested definition for “product” is: Product means a commodity that is distinguishable when compared to a generic product line or sub-line by a SKU identification number for sale and distribution in commerce.” | Added definitions of container line, product line, and product sub-line to clarify and provide consistency in use of these terms. | Added definitions to Section 17943. (Adopted revised regulations Sections 17943 (c), (s) and (u)). | 17943 |
| L-10A-03 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR is asking the Board to review the legal basis for staff’s proposal in the regulations which would allow a new container made with a different plastic resin to qualify for the source reduction option. We would also like the Board to review the option that permits companies to take credit for switching to non-rigid plastic containers. The RPPC statute and regulations do not allow plastic or metal to be substituted for glass- and there appears to be no basis in statute for concluding that substituting one type of plastic resin for another is permissible. Section 42301(j)(2)(A) of the RPPC statute expressly provides that source reduction may not be achieved by substituting “a different material type”. The Board has attempted to classify all plastic resins as the same “material type” to avoid this prohibition. | See L-03-01 and L-05-08. | No change. | 17943 (w) (1)(C)(2)(A) |
| L-10A-04 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The APR supports the use of source reduction and concentrated packaging as part of California’s waste management hierarchy. The APR specifically asks the Board to clarify that companies who are concentrating their products by 10% and taking the position that they no longer need to use recycled content to comply are misinterpreting the RPPC law. The APR requests the Board to review its rules that specify the 10% source reduction as a once-only requirement. The number of times a product may be source reduced does not appear to be limited by statute. | There is no "lifetime exemption" from the requirements of the law. Any time a product manufacturer is selected to certify its RPPCs' compliance, it needs to report on all of its current RPPCs, whether or not they were included in a prior certification and found (or not found) in compliance. If a specific container has not changed since the prior certification, the same information would be submitted again to document its continued compliance. Statute does not specify that source reduction has to be accomplished more than once. This has been an issue in several laws that include source reduction as diversion. PRC Section 42310 states that one of the listed compliance criteria must be met. Once a compliance option is met, the Statute does not provide authority to the Department to require a product to “re-qualify” or require additional source reduction of the same container once compliance is achieved. | No change | 17945.3 (c)(3) |
| L-10A-05 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR believes that use of postconsumer material helps meet the mandated State diversion rate and meets Strategic Directives | There is no statutory mandate that the State achieve 50 percent diversion. There is a requirement that each city, county and regional agency plan for and implement diversion programs to achieve a disposal reduction goal (PRC Sections 41780-41780.2). See also L-07-01 regarding strategic directives. | No change. | General |

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| L-10A-06 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The regulations should specify that products in source reduced containers must re-qualify as having 10% source reduction every two years. | Statute does not specify that source reduction has to be accomplished more than once. This has been an issue in several laws that include source reduction as diversion. The Department does not agree that it has statutory authority to require additional source reduction every two years. PRC Section 42310 states that one of the listed compliance criteria must be met. Once a compliance option is met, the Statute does not provide authority to the Department to require a product to “re-qualify” or require additional source reduction of the same container once compliance is achieved. | No change. | 17945.3 (c)(3) |
| L-10A-07 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The regulations should specify that source reduced containers must include postconsumer material and that postconsumer material in source reduced containers will be allowed in averaging for compliance. | The law states RPPCs must comply with one of several options but does not specify RPPCs can partially comply with two options (PRC Section 42310). | No change. | 17945.3 (c)(3) |
| L-10A-08 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR believes the number of facilities required to certify each year is inadequate to implement the law and prevent people from “playing the odds” that they will be caught not complying. APR believes the Department has the statutory authority to require everyone to certify annually. | The law requires that all product manufacturers comply with the RPPC law at all times. Selecting a percentage to demonstrate compliance in a particular year is consistent with the enforcement approach used by many, if not most, government agencies. It provides a deterrent effect with a relatively small number of staff. See also L-10A-01 | No change. | 17945.3 (c)(3) |
| L-10A-09 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The term “particular type rigid plastic packaging container” forms the basis for a proposed new revision which allows a product or package to qualify as a source reduced container. The proposed provision would appear to allow a product manufacturer to meet the source reduction option if package weight per unit or use of product was reduced by 10% when compared with similar products by the manufacturer or other manufacturers, without requiring any legal relationship between the parties. | Existing regulations include the term particular type rigid plastic packaging container (Section 17943 (b)(21)). Existing regulations also include a definition of similar rigid plastic packaging container within the definition of source reduced container (Section 17943 (b)(31)). The existing definition of similar rigid plastic packaging container refers to the particular type rigid plastic packaging container definition in existing Section 17943 (b)(21). The adopted revised regulations make changes to simplify the regulations by: 1) moving the definition of similar rigid plastic packaging container to the definition section and modifying that definition; keeping the definition of particular type rigid plastic packaging container; and 2) clarifying that a source reduced container may be a similar rigid plastic packaging container holding similar products held by particular type rigid plastic packaging containers. | No change. | 17943 (l) |
| L-10A-010 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The APR does not support deleting Section 17943 (a) of the regulations because this section explains the purpose of the regulation. | Over the years many people have requested the question and answer format in the existing regulations be removed because it was confusing. Statute includes the purpose of the law. For example, PRC Section 42300 (j) says the RPPC law is intended to spur markets for plastic materials collected for recycling by requiring manufacturers to utilize increasing amounts of postconsumer recycled material in their rigid plastic packaging containers. | No change. | 17943 (a) |
| L-10A-11 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The APR does not want the Board to delete Section 17943 (b) (2) which provides a definition of “Capable of Multiple Reclosure”. We support revising this term as follows: “Capable of at least one closure” means a rigid plastic packaging container that closed at least once, including but not limited to closure occurring during manufacturing or processing, with an attached or unattached lid, regardless of whether the container is capable of reclosure after the lid is opened | For consistency and clarity staff amended the definition of RPPC (adopted revised regulations Section 17943(aa)(1) to include language regarding containers that close at least once. | Included containers that close at least once (adopted revised Section 17943 (aa) (1)). | 17943 (t)(1) |

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| L-10B-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | On October 25, 2007, the CIWMB Board made their draft revised RPPC Regulations available to the public. APR submitted extensive comments on this Board initiative. We are extremely disturbed that none of APR's comments were incorporated with the October 2007 revisions. | The comments were submitted as part of the informal rulemaking process. The Department has included responses to the comments in the formal rulemaking package. The letters re-sent in the formal rulemaking process are numbered L-10A and L-10B | No change. | General |
| L-10B-02 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The RPPC statute does not define all plastics as the same material type and it does not require the Board to treat all plastics the same. Nor does statute allow companies to receive credit for resin switching. Marketplace reality is that granting exemptions under the RPPC for simply switching from one resin to another is not a practical way to encourage recycling. The Board should not allow switching to plastic resins that provide fewer opportunities for recovery than resins that are currently being recycled and used as recycled content. | Comment noted. Commenter supports adopted revised regulation removal of resin switching as source reduction. See also L-01-01 and L-03-01. | No change. | 17943 (f) |
| L-10B-03 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The APR is suggesting a compliance system that is based on the requirement that any firm seeking exemption to the RPPC file an annual compliance certification. APR believes the current practice encourages non-compliance with little opportunity to be caught, leading many companies to "play the odds." | See L-10A-01. | No change. | 17945.2 |
| L-10B-04 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The Board's Legal Office has stated that for credit trading to occur, it needs to be done within the same corporate ownership. There is no current interpretation that allows manufacturers to meet their recycled content requirements through the use of an agreement with another company that is not under the same corporate ownership. | PRC 42310.3 only allows product manufacturers under the same corporate ownership to use the Alternative Compliance Method. | No change. | 17945.3 (d) |
| L-10B-05 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | There is confusion in the marketplace regarding the practice of concentrating a product and compliance with the RPPC. Some consumer product companies are interpreting the RPPC regulations to allow them to simply concentrate their product by 10% with no utilization of recycled content. The package itself could be light weighted through the use of virgin resin with no change in the amount or concentration of the product. | See L-10A-04. Additionally, for source reduction, a company may reduce the weight of the RPPC, concentrate the product, or a combination of these two. | No change. | 17945.3 (c)(3) |
| L-10B-06 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR strongly urges that the RPPC regulations specify that source reduced containers that also use postconsumer material be allowed to use their postconsumer material content toward the average for the content compliance option. | See L-10A-07. | No change. | 17945.3 (c)(3) |
| L-10B-07 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The RPPC program needs to be evaluated for impacts on mandated statewide diversion rate. | See L-10A-05. | No change. | General |
| L-10B-08 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | APR is concerned that the proposed changes confuse the concept of a "product" with its package for purposes of compliance. The proposed definition of "Newly Introduced Product" ignores significant differences in size, shape, design, grade and flavor of each container. It is difficult to understand what is a newly introduced product or package, if size, color or label does not play a role. A regulatory definition of the term "product" is urgently needed to identify a source reduced container. The APR proposes that the Board consider a definition for the term "product" that is based on an SKU identification number. | The adopted revised regulations include revisions to replace the term "packaged" with "held". This provides focus on the product contained within the package. Additionally, the definition of "Newly Introduced Product" clarifies that a change in the package does not constitute a new product. A definition of "product line" was also added to help address definitional concerns. See L-10A-02. | Changed term used (e.g., "held" in lieu of "packaged in") throughout the regulations. | 17943 (i) |

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| L-10B-09 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Right now, the rules allow a one-time, lifetime exemption from the requirements of the RPPC law by utilizing the 10% source reduction of a package or product option. APR does not believe that a package or product that qualifies one time for the source reduction option to comply with the RPPC requirements should be provided a lifetime exemption from being part of the waste management solution in California. We believe the source reduction options within the RPPC should not be so easily achieved such that other options, specifically recycled content – are not even considered for compliance. APR believes that products should have to re-qualify as source reduced every two years in order to be in compliance with the law. | See L-10A-04 and L-10A-06. | Revised regulations to clarify that the manufacturer reports on each active container line, whether or not it was previously certified and found in or out of compliance (adopted revised regulations Section 17945.3(c)). | 17943 (w) |
| L-10B-10 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Users of postconsumer material must have a 25% recycled content rate every day to comply with the law while products are only being source reduced by 10% once over their lifetime. To promote better source reduction, products should have to re-qualify every two years. | See L-10A-04 and L-10A-06. | No change. | 17943 (w) |
| L-10C-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Changing resins usually means changing molds, so manufacturers who claim no costs incurred when switching resins either have not done so or have very generalized equipment. | Comment noted. See description of preparation of the EFIS survey and report in L-05-04. | No change. | Economic Analysis |
| L-10C-02 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Resin prices vary over time and compared to other virgin or recycled resins, so an analysis of resin switching should consider the long-term history of virgin and recycled resin pricing. [Cites specific prices as examples in letter.] | <p>The core of the economic analysis was developed between March and July 2009 and used, then-current, virgin and recycled resin prices. Further, the price and cost information provided by survey responders was 2008 data. There was no valid reason to incorporate historical prices in the analysis.</p> <p>Virgin resin prices were obtained from Plastics News' public website for the period August 12, 1996 through August 29, 2011. These weekly posted prices were adjusted for inflation using the Consumer Price Index for All Urban Consumer, US City Average.</p> <p>The cost to California-based product manufacturers ranges from \$78,000 to \$87,000, and the total cost to all RPPC users ranged from \$661,000 to \$739,000 per year. Similarly, the average cost increase for the 78.9 million impacted containers was estimated to be 0.84 to 0.94 cents.</p> <p>Although the Department is not required to prepare an additional Economic and Fiscal Impact Study after the start of the formal rulemaking process, further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35.</p> | No change. | Economic Analysis |
| L-10C-03 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | To achieve a 10% weight reduction by shifting from HDPE to PP will require new molds (to make the part thinner). | Comment noted. Comment does not specifically address regulations revision. | No change. | Economic Analysis |

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| L-10C-04 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Resin switching to virgin PP will cost consumers in California more money than maintaining the current use of recycled HDPE because recycled HDPE costs considerably less than virgin HDPE or virgin PP (even if haven't included freight costs of about 3 cents per pound). | Comment noted. The commenter makes general statements about costs, so the Department is unable to review and analyze specific information to reach a conclusion. | No change. | Economic Analysis |
| L-10C-05 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | While resin switching from PET to PP could achieve a 10% weight reduction, ignoring that the resin shrinkage in molds differs for the two resins, the property performance (e.g., PET stiffer, better impact properties) would keep applications in PET. | Comment noted. Comment does not specifically address regulations revision. The commenter makes general statements about resin switching, so the Department is unable to review and analyze specific information to reach a conclusion. | No change. | General |
| L-10C-06 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Some would propose switching from HDPE to PP because of superior thermal properties of PP, or the stiffer nature of PP, but others may propose the switch because of difficulty finding recycled HDPE, and others do not report such problems. | Comment noted. Comment does not specifically address regulations revision. | No change. | General |
| L-10C-07 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | We find that the life cycle inventory attributes of recycled HDPE (process and transportation energy, greenhouse gas emissions, landfill solid waste) are superior to either virgin HDPE or virgin PP per Franklin Associates Life Cycle Inventory. Final Revised Report: Cradle-to-Gate Life Cycle Inventory of Nine Plastic Resins and Four Polyurethane Precursors (Prepared for American Chemistry Council by Franklin Associates, February 2011) | See L-05-11. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, greenhouse gas emissions related to resin switching to comply with source reduction requirements section, page 6 and the updated Economic and Fiscal Impact Statement section, page 35. | No change. | Economic Analysis |
| L-11-01 | Tony Moucahen Peninsula Plastics Recycling | Peninsula wholeheartedly supports staff recommendation to eliminate language that allows for compliance with the RPPC under the source reduction option simply by switching from one resin type to another. The RPPC law is clean in that it is not considered source reduction if changes adversely affect the potential for the container to be recycled or made of postconsumer material. | Comment noted. Commenter supports eliminating resin switching as source reduction. | No change. | 17943 (w) |
| L-11-02 | Tony Moucahen, Peninsula Plastics Recycling | Peninsula supports the staff recommendation that would amend the current regulatory definition of "postconsumer material" by deleting the language that permits internally generated plant scrap – historically referred to as "post-industrial" to be considered "postconsumer material". The RPPC was designed to encourage and foster the collection and processing of material discarded by the consumer. The Federal Trade Commission defines "postconsumer" as material that has met its intended use. | Comment noted. Commenter supports adopted revised definition of postconsumer material. | No change. | 17943 (m) |
| L-12-01 | Kurt Van Ulmer, Sashco Inc. | All adhesive caulking and sealant cartridge containers with resealable caps should be exempt from RPPC law. Containers have very different properties from a typical liquid beverage container, and therefore, should not be classified as similar. The product can be used entirely before discarding and gives landfills relief by not having a prematurely cured product being thrown out. The nature of the cartridge allows it to be crushed flat with or without the cap on, causing minimal volume impacts in landfills. | See L-05-01 With regards to the comparison of beverage containers to cartridge containers, food containers are specifically exempt from the RPPC program per PRC 42340(b) and are not required to comply with the RPPC laws. Integrated Solid Waste Management: Engineering Principles and Management Issues (Tchobanoglous, Thiesen and Vigil. 1993. Mc Graw Hill) says that initial compaction at landfills varies from 550 to 1200 lb per cubic yard (page 473). Almost all containers are collapse at these compaction rates, so there would be little difference between landfill impacts of collapsible and non-collapsible containers. | No change. | General |

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| L-13-01 | Bill O’Grady, Talco Plastics | Talco respectfully urges adoption of the proposed changes to the RPPC regulations which simplify and add clarity to the existing regulations consistent with the letter and the spirit of the statute. | Comment noted. Commenter supports adopted revised regulations. | No change. | General |
| L-14-01 | Mark Murray, Californians Against Waste | Some stakeholders have raised concerns regarding a potential insufficient supply of postconsumer recycled plastic (PCR) to meet market demands if the proposed changes to the regulations result in more manufacturers having to comply with RPPC law. To the contrary, existing data from the U.S. EPA and CalRecycle [see <i>Municipal Solid Waste in the United States, 2009 Facts and Figures</i> , U.S. EPA, December 2010 and <i>Biannual Report of Beverage Container Sales, Returns, Redemption, and Recycling Rates</i> , CalRecycle, May 2011] demonstrate that there’s a substantially greater supply of PCR than the current domestic market demands and the existing collection infrastructure could readily supply more PCR if demand warranted. [Cites data from these reports.] | Both the EFIS and Initial Study and Negative Declaration relied on the Department’s beverage container recycling report and reached the same conclusion as the commenter. The Department reviewed the national data, but chose to rely on a different set of data in preparing the updated EFIS to develop California costs. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13 and the updated Economic and Fiscal Impact Statement section, page 35. | | 17943 (aa) |
| L-14-02 | Mark Murray, Californians Against Waste | We also want to reiterate our support of the proposed changes to the definitions of “Material Type” and “Source Reduction” [sic] to not allow credit for resin switching. Polypropylene (PP) is not a widely recycled or recyclable material, particularly when compared to PET and HDPE, and allowing resin swapping from PET and HDPE to PP would be inconsistent with statute which prohibits changes to a container that make it less recyclable, and would be counter to the legislative intent of increasing demand for postconsumer plastics. | Comment noted. Commenter supports adopted revised regulations definition of “Material Type” (Section 17943 (q) and “Source Reduced Container” (Section 17943 (af)). | | 17943 (i) and 17943 (af) |
| S-01-01 | Mark Murray, Californians Against Waste | Californians Against Waste (CAW) is in support of the vast majority of changes and thinks that these will improve and update the law. These changes make the regulations more consistent with statute and allow for, as you described, a more even playing field implementation. | Comment noted. Commenter supports most of adopted revised regulations. | No change. | General |
| S-01-02 | Mark Murray, Californians Against Waste | With regard to the question of resin switching, we think that the proposed regulations are now consistent with statute with regard to not making a change in material type. The most important provision in statute is: does a change in material type negatively impact the recycling of the container. Changing from high density polyethylene to polypropylene has a negative impact on recycling because we have a strong recycling infrastructure for high density polyethylene, however, we do not have the same recycling infrastructure for polypropylene. | See L-03-01Based on the Department’s re-evaluation of statute regarding the definition of material type and sourced reduced container (described above), the Department found that statutory requirements that pre-date the RPPC Act of 1991 were not considered in the development of Integrated Waste Management Board’s 1994 RPPC regulations and ultimately concluded that resin switching was not permissible based on the statutory requirements. Therefore, the Department could not consider alternatives which permitted resin switching. See L-05-08. Further discussion is provided in the Final Statement of Reason’ (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option. | No change. | 17943 (w) (1)(C)(2)(A) |
| S-01-03 | Mark Murray , Californians Against Waste | Rigid plastic containers, that have been filled, go to a distribution center, or to a retailer and that product has to be destroyed for some reason. I think it is impossible to make a distinction with obsolete containers as to whether or not they are postconsumer. We support retaining the provision that calls containers that holds obsolete or unsold products and keeping them in the definition of postconsumer. | See L-01-01. Commenter supports definition of postconsumer material (adopted revised definition Section 17943(q)). | Revised definition of Postconsumer Material (adopted revised regulations Section 17943(q)) | 17943 (m) |

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| S-02-01 | Pansy Leo, Ropak Packaging | Ropak, along with other container manufacturers, cannot find sufficient quantities of injection grade HDPE and polypropylene PCR in the marketplace today to meet the RPPC compliance option of incorporating 25% PCR material. We are opposed to not allowing an alternative resin as a means to achieve at least 10% source reduction. It is well known in our industry that switching from HDPE to polypropylene allows for maximum source reduction due to the physical and chemical properties of polypropylene vs. HDPE. Our industry needs a source reduction option with alternative resins in order to compete with other packaging formats, such as cartons or flexible packages which are much lighter in weight. | See L-05-03. | No change. | 17943 (w) (1)(C)(2)(A) |
| S-02-02 | Pansy Leo, Ropak Packaging | Another advantage is the production per count of polypropylene resin results in less CO ₂ emissions, 1.34 pounds of CO ₂ vs. 1.48 pounds of CO ₂ for HDPE. And this is based on the ACC 2007 report entitled "Cradle to Gate Lifecycle Inventory of Nine Classic Resins and Two Polyurethane Precursors." One cannot ignore the source reduction achieved with an alternate resin still leads to a significant reduction in greenhouse gases, which is a major legislative intent as evidenced by the passage of California's Global Warming Solutions Act of 2006. | See L-05-11. Comments on the 2011 updated version of the Franklin Lifecycle Inventory study cited can be found in L10C-07. | No change. | 17943 (w) |
| S-02-03 | Pansy Leo, Ropak Packaging | If the regulations do not allow us to achieve source reduction by switching to polypropylene resin, then it will be extremely difficult for us to recoup our business investment and to help product manufacturers be compliant with the regulations since, as stated earlier, injection grade PCR material is not available in sufficient quantities and, therefore, is not a practical viable option. | See L-05-03. | No change. | 17943 (w) |
| S-03-01 | Tim Shestek, American Chemistry Council | We are opposed to the definition of the Rigid Plastic Packaging Container, Reusable Container, Postconsumer Material, and Source Reduction. These definitions are inconsistent with existing statute and runs counter to some broader environmental goals. | Regarding the definition for RPPC See L-02-01A; Reusable Container See L-07-02; Postconsumer Material See L-01-01; and Source Reduction, See L-05—08 and L-05-11. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943(q)). | 17943 (t) 17943 (s) 17943 (m) 17943 (w) |
| S-03-02 | Tim Shestek, American Chemistry Council | We are opposed to the definition of Source Reduced Container. This definition is inconsistent with existing statute and runs counter to some broader environmental goals. We believe the proposed regulations would penalize the product manufacturer that moves from one specific resin to another, even though that switch would result in utilization of less material and is more resource efficient | See L-05-08. Product manufacturers would not be penalized for resin switching. Nothing in the proposed regulations prohibits product manufacturers electing to switch resins for weight or cost reasons as long as another compliance option is used. So while product manufacturers may elect to switch resins (e.g., for weight or cost reasons), they will no longer get "credit" towards compliance with the RPPC law but have to seek compliance using another option. There are multiple legislative 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 intent language from other laws. | No change. | 17943 (w) |

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| S-03-03 | Tim Shestek, American Chemistry Council | We are opposed to the definition of Reusable Container. This definition is inconsistent with existing statute and runs counter to some broader environmental goals. The proposed change to the definition of “Reusable Container” would unnecessarily impact a number of RPPCs such as hardware, tools, office products, where consumers routinely use that package to store the original product and not necessarily to replenish the contents of the original product. | See L-07-02. | No change. | 17943 (s) |
| S-03-04 | Tim Shestek, American Chemistry Council | We think product manufacturers should be given 120 days to respond to certification requests. | See L07-08 | Clarified the certification timelines and due dates (adopted revised Section 17945.2 (c)). | 17945.2 (c) |
| S-03-05 | Tim Shestek, American Chemistry Council | The current regulations provide a provision that automatically provides a 12 month waiver for newly introduced products and we believe that should be retained. | Comment noted. Commenter supports waivers in adopted revised regulations section 17946. | No change. | 17946 |
| S-03-06 | Tim Shestek, American Chemistry Council | We believe the requirement for manufacturers of pesticides and insecticides to submit a request for an exemption should be deleted because they are exempt from the law. | See L-07-12 | Removed submittal of a request for exemption (adopted revised Section 17946.5 (b)). | 17946.5 (b)(2) |
| S-03-07 | Tim Shestek, American Chemistry Council | We believe the regulations should provide adequate notice and lead time so the product manufacturers can understand and comply with any future regulatory changes. | See L- L-05-07 | No change. | General |
| S-04-01 | Randy Pollack Consumer product companies and manufacturers | The regulations and definition of an RPPC have vastly expanded the program to include all heat-sealed clamshells and other containers. This would open up the program to an additional 350 million containers. I believe that clamshells should not be included in these regulations until we have further review regarding including them in the program. The proposed regulations are setting companies up for failure. | See L-05-01 and L-05-07. | No change. | 17943 (t) |
| S -04-02 | Randy Pollack Consumer product companies and manufacturers | In many instances, clam shell containers cannot be source reduced because they are already very light weight and they cannot use postconsumer resin due to packaging clarity and integrity issues. | See L-05-01 and L-05-02. Additionally, per PRC 42310, source reduction and use of 25% PCM are only two of five options for compliance. Other options include having a recycling rate of 45%, being reusable or refillable, or being a reusable floral container. Product manufacturers also have the alternative compliance method, outlined in adopted revised regulations Section 17944.1. | No change. | 17943 (t) |
| S-04-03 | Randy Pollack Consumer product companies and manufacturers | If a container manufacturer reduces the weight of a container by 10%, five years before a certification is requested, the product manufacturer cannot demonstrate compliance under source reduction compliance option. This is a concern to companies. | See L-10A-04 and See L-10B-10. Manufacturers are required to comply even if they are not required to certify compliance in a particular cycle. Manufacturers <u>may</u> retain records sufficient to demonstrate source reduction or are free to use another compliance option. | No change. | 17943 (w) |
| S-04-04 | Randy Pollack Consumer product companies and manufacturers | It is very difficult for companies to come out with the most environmentally friendly, light-weight product in Year One, and then be in a position to try to reduce that weight in Year Two. This regulation basically incentivizes people to introduce a container a little heavier in Year One, so you can reduce it in year two and demonstrate compliance. | See L-05-08, L10A-04 and L10B-10. The methodology suggested violates the spirit of the RPPC program, but the Department is not authorized by statute to prohibit it. Additionally, per PRC 42310, source reduction is only one of five options for compliance. Other options include being made of 25% PCM, having a recycling rate of 45%, being reusable or refillable, or being a reusable floral container. | No change. | 17943 (w) |

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| S-04-05 | Randy Pollack Consumer product companies and manufacturers | Those who have been penalized by the Department should not receive requests for certification for at least five years. It takes companies who may have violated the law, or do not know about the law, years to come into compliance. | See L-06-05. | No change. | 17945.1 (b) |
| S-04-06 | Randy Pollack Consumer product companies and manufacturers | It is important that any effective date for the regulation be several years out. | See L-05-07. | No change. | General |
| S-04-07 | Randy Pollack Consumer product companies and manufacturers | There is great concern about the regulation part dealing with FIFRA, where those products that are exempted under the law would have to provide a waiver. | See L-07-12. | Clarified wording of adopted revised Section 17946.5 (b). | 17946.5 (b)(2) |
| S-05-01 | Steve Alexander Assn of Postconsumer Plastic Recyclers (APR) | We appreciate the efforts and recommendations of the Waste Management Board back in 2007 to eliminate resin switching as a potential compliance option. The intent of the law, when it was originally enacted, was to encourage and develop and enhance the plastics recycling infrastructure. APR is the only organization that is working in North America to expand the collection and the processing of material other than PET and high-density polyethylene. If you allow resin switching, the investments in the recycling infrastructure will not be made because people will no longer need to provide recycled content for their packaging. You will also put PET and high density reclamation at a risk and the state of California has spent over \$100 million over the past several years in funds supporting the development of the recycling infrastructure. We wholeheartedly support the staff recommendation to eliminate resin switching. | See L-03-01. Commenter supports adopted revised regulations elimination of resin switching as a way of comply with the source reduction compliance option. | No change. | 17943 (w) (1)(C)(2)(A) |
| S-05-02 | Steve Alexander, Assn of Postconsumer Plastic Recyclers (APR) | We need to work with material recovery facilities, waste haulers, and folks that process collected recycled materials to ensure the materials are effectively sorted to meet our bale specifications to make more recycled resin available. | Comment noted. Comment not specifically directed at the agency's proposed action or procedures. | No change. | General |
| S-06-01 | Parham Yedidsion, Envision Plastics | Virgin polypropylene has approximately 30 % more carbon dioxide and greenhouse emissions and is substantially more unattractive environmentally than HDPE, recycled HDPE or polypropylene. It is absolutely untrue that recycled high-density resins have not been available for use in substantial amounts. | See L-05-03. The commenter makes general statements about greenhouse gas emissions, so the Department is unable to review and analyze specific information to reach a conclusion. | No change. | 17943 (w) (1)(C)(2)(A) |
| S-07-01 | Kurt Schuparra, CITA (Cellular Telecommunications Industry Assn) | We would like to see the term "clamshell," which appears in the regulations three times, be deleted. | See L-07-09B . | No change. | 17943 (t) |

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| S-08-01 | Bill O'Grady, Talco Plastics | It doesn't make much sense to give consideration to any recommendation or changes to the regulations that compromise the effectiveness of statute or place the sustainability of this valuable program at risk. Talco respectfully urges adoption of the proposed changes to the RPPC regulations. | Comment noted. Commenter supports the adopted revised regulations. | No change. | General |
| S-09-01 | Patti Krebs, Industrial Environmental Assn | Clamshells and blister packs are commonly used for accessories and samples. These types of materials are not commonly reengineered or redesigned over time, which would virtually eliminate source reduction. The specifications and requirements for the clamshells and the blister packs come from the retailers. We would respectfully request that clamshell and blister packs not be included in this regulation. I support everything that has been said by Randy Pollack. | See S-04-02. Blister packs would not meet the definition of a RPPC based on the industry's current packaging/assembly methods. See responses to Randy Pollack's comments in: L-05-01, L-05-02, L-05-05-07, L-05-08, L-07-01, L-07-12, L10A-04, and L10B-10. | No change. | 17943 (t) |
| S-09-02 | Patti Krebs, Industrial Environmental Assn | Please confirm that the pharmaceutical and medical device industry clamshells and blister packs will not be included. | PRC 42340 (b) exempts RPPCs containing drugs and medical devices. | No change. | 17943 (t) |
| S-10-01 | Kurt Van Ulmer, Sashco Inc. | All adhesive caulking and sealant cartridge containers with resealable caps should be exempt from RPPC law. Containers have very different properties from a typical liquid beverage container, and therefore, should not be classified as similar. The product can be used entirely before discarding and gives landfills relief by not having a prematurely cured product being thrown out. The nature of the cartridge allows it be crush flat with or without the cap on, causing minimal volume impacts in landfills. | See L-05-01 and L-12-01. | No change. | 17943 (t) |
| S-11-01 | Brock Wanless, Illinois Tool Works (ITW) | Currently the definition of "postconsumer material" includes two other paragraphs that are proposed to be stricken in the proposed regulations. We support the retention of those two paragraphs to further clarify statute. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-02 | Brock Wanless, Illinois Tool Works (ITW) | Striking the existing definition of postconsumer material fundamentally undermines AB 1344, which allows companies like ours to take advantage of horizontal averaging to meet alternative methods to RPPC compliance. AB 1344 allows companies like ours to take advantage of the recycling that ITW undertakes, particularly in California | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-03 | Brock Wanless, Illinois Tool Works (ITW) | ITW is a major recycler and the plastic material that is taken back is then turned into something else, it's not a part of an original manufacturing process, its plastic that is no longer used, it's obsolete, it holds obsolete materials, mistaken printed materials. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-04 | Brock Wanless, Illinois Tool Works (ITW) | It is understood that the changes to the definition of postconsumer material are being proposed to 1) realign the definition with statute; and 2) some policy considerations mentioned seem to indicate that there's already an existing recycling market for all post-industrial plastics. We suggest that this is not the case. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |

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| S-11-05 | Brock Wanless, Illinois Tool Works (ITW) | ITW does not feel that the market is flush in terms of everyone taking back all types of plastic material for reuse in the manufacturing process. There are some plastics that companies like ours do use that would otherwise be destined for landfilling. We're not the only ones. Continuing to incentivize companies like ours to divert waste from the waste stream is a good thing. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-06 | Brock Wanless, Illinois Tool Works (ITW) | In terms where the postconsumer material comes from, there's something inequitable here in terms of drawing a distinction between municipal waste and commercial or industrial waste. From ITW's perspective, it really shouldn't matter where the plastic material is coming from. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-07 | Brock Wanless, Illinois Tool Works (ITW) | We agree with staff that re-grind should not be allowed to comply as postconsumer plastic. | See L-01-01. Commenter supports revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-08 | Brock Wanless, Illinois Tool Works (ITW) | We believe that taking generated scrap from an industrial commercial site to a different facility with a different manufacturing or fabrication process is diversion, as long as you turn it into something else, something new. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| S-11-09 | Brock Wanless, Illinois Tool Works (ITW) | We support the certification process changes. | Comment noted. Commenter supports adopted revised regulations certification process Section 17945.2). | No change. | 17945.2 |
| S-11-10 | Brock Wanless, Illinois Tool Works (ITW) | We support the Pre-certification process changes in Section 17945.1. | Comment noted. Commenter supports adopted revised regulations precertification process Section 17945.1. | No change. | 17945.1 |
| S-11-11 | Brock Wanless, Illinois Tool Works (ITW) | We are unclear about what staff's intent is with regards to resin switching [source reduction]. We would like clarification from staff on this issue. | See L-03-01 and L-05-08. | No change. | 17943 (w) (1)(C)(2)(A) |
| S-11-12 | Brock Wanless, Illinois Tool Works (ITW) | The regulations were well done, it was extremely well done. ITW feel that overall, the regulatory package is something that we could potentially support so long as we get past a few of these initial hurdles. | Comment noted. Commenter supports most proposed regulations revisions. | No change. | General |
| W-01-01 | George Larson, Illinois Tool Works (ITW) | With regards to the Economic study, are all of the numbers and background information available on the Web? How could we research and be able to better understand the background of how the study was completed? | The Economic and Fiscal Impact Statement (EFIS) has been available on the RPPC Program's rulemaking webpage since the initial rulemaking notice was published in February 2011. The EFIS contains summary data. Portions of the raw data tables themselves, which are quite extensive, contain some confidential information, but those portions which do not, are public records and are available for review upon request. | No change. | Economic Analysis |
| W-01-02 | George Larson, Illinois Tool Works (ITW) | The 2004 Waste Characterization Study identifies 10 categories of plastics, and about 60% of the weight of the plastics that were extracted from the waste stream were not RPPCs, they were other plastics, they were industrial and commercial. It seems as if the Economic Study says that RPPCs were the preponderance of plastic material. | The Department's 2004 Waste Characterization Study separated RPPCs from other types of plastics. The Department used only the RPPC data from that study. | No change. | Economic Analysis |

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| W-01-03 | George Larson, Illinois Tool Works (ITW) | I would like to verify that container manufacturers are held to the same standards for reporting information as the product manufacturers. If Waste Management, a client of mine, secures obsolete plastic packaging, and sells it to ITW, it will be considered postconsumer material. If ITW goes and secures the material themselves, it should also be acceptable postconsumer. | See L-01-01. If a product manufacturer receives obsolete packaging, that material can qualify as postconsumer materials. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-02-01 | Randy Pollack, for various manufacturers | As part of the Economic Analysis presentation, you mentioned that there are about 3.94 billion containers. Is that the total RPPC stream? | The total RPPC stream is estimated to be 7.23 billion containers, which includes approximately 3.29 billion containers that meet one of the three exemption requirements. The proposed amendments would result in approximately 3.94 billion RPPCs that must satisfy one of the manufacturer compliance standards of Public Resources Code (PRC) section 42310. | No change. | Economic Analysis |
| W-02-02 | Randy Pollack, for various manufacturers | In reviewing the Economic Study it is my understanding that the cost impact is based on both manufacturers' and consumers' costs. Is this cost only based upon that 3.94 billion? Were the cost impacts of the Economic study for both manufacturers and consumers based on the 3.94 billion RPPCs that have to comply? | No, the 3.94 billion containers were not used to determine the cost of the impacted containers. The cost of the impacted containers was determined based on the cost of acquiring the material needed to achieve compliance. For the resin switching amendment the cost was based on changing virgin resins. For the other options it was based on acquiring postconsumer material needed to achieve compliance with the proposed amendments. The cost was reported for the manufacturers, consumers and the impacted containers. To provide context for the impacted containers cost, the total cost was averaged over the calculated total of 3.94 billion regulated containers. | No change. | Economic Analysis |
| W-02-03 | Randy Pollack, for various manufacturers | The economic Study's assessment of the cost of the implementation of the regulations should only be based upon containers that are going to be changed, not the whole RPPC stream. | See W-02-02. | No change. | Economic Analysis |
| W-02-04 | Randy Pollack, for various manufacturers | Why is the cost of the implementation of the regulations, in the Economic Study, only based upon in-state California manufacturers? | The cost impacts are based on all manufacturers of RPPCs. One of the specific questions that must be addressed in the EFIS is the cost impacts on manufacturers located in California. Please note that the rulemaking requires only California specific effects, not nationwide. See L-05-06. | No change. | Economic Analysis |
| W-02-05 | Randy Pollack, for various manufacturers | The Department stated that 30 companies responded to the Department's survey for the Economic Study. Based on this survey 11 respondents had no operating cost impact, so 19 companies had an impact. Is this correct? | Thirty (30) of the 95 responding companies answered the questions regarding operating cost impacts. Eleven (11) companies stated that the amended regulations would have no cost impact, 18 estimated increased costs, and one company expected a decrease of about 2 cents per container. Additionally, several companies, that did not answer the operating cost questions, stated that the amendments would benefit the company. | No change. | Economic Analysis |
| W-02-06 | Randy Pollack, for various manufacturers | How did the Department extrapolate the results of the Economic Study to determine what the cost impact of the regulations could potentially be? | See L-05-04, W-02-01 and W-02-02. | No change. | Economic Analysis |
| W-02-07 | Randy Pollack, for various manufacturers | I know you had maybe a 7 or 8% response rate to your survey of the industry regarding the impacts of the proposed changes. However, I think when you say there is only going to be an impact of \$457,000 to California manufacturers that this is extremely low. People will be spending \$30,000 to \$100,000 just on doing certifications. I think these numbers are unreliable. | With regards to California manufacturers, the purpose of the EFIS is to address the marginal cost impacts of the proposed revisions to the RPPC regulations. Of the 256 California-based product manufacturers estimated to be impacted by the amended regulations, only a fraction will be asked to submit a certification within a specific cycle. ; Approximately 1250 California manufacturers are already subject to the | No change. | Economic Analysis |

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| | | | <p>certification requirements of the RPPC program and will not be impacted by the revised RPPC regulations.</p> <p>The EFIS does not include the costs incurred by the approximately 1250 California manufacturers that must continue to comply with the regulations and that were not impacted by the revised regulations. The EFIS estimated about 672.7 million RPPCs (Table 2, page 6) are impacted by the amendments. For the 256 affected California-based manufacturers (Table 4, page 10) there will increased costs of \$433,000 per year. The EFIS did not address the costs of producing the approximately 3.27 billion <u>regulated</u> containers that are not impacted by the RPPC regulations. Based on the proportion of manufacturers who responded to the survey and indicated whether there would be impacts, for the vast majority of manufacturers, the amendments do not impact their containers or certifications.</p> <p>Although the Department is not required to prepare an additional EFIS after the start of the formal rulemaking process, further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35. See L-05-06.</p> <p>Recordkeeping and Certification Filing Costs are discussed on pages 28 - 29 of the EFIS. The Department estimated that the incremental recordkeeping costs associated with the amended regulations is about \$100. Seventeen (17) of the 26 manufacturers responding to the recordkeeping/certification cost survey question indicated no increased costs. Of those manufacturers that stated there was a cost increase, the median increase was less than \$500.</p> | | |
| W-02-08 | Randy Pollack, for various manufacturers | The cost of completing the certification should be included in the Economic analysis. | See W-02-07 | No change. | Economic Analysis |
| W-02-09 | Randy Pollack, for various manufacturers | We have a concern regarding the new people (businesses) impacted by the proposed language changes. When you add 357 million new containers to this program, these people are going to be significantly impacted by trying to meet the requirement of this law, which will result in them having to redesign their packages., For example just to provide certification forms, there is a huge cost, let alone people who actually have to redesign their containers. | See W-02-07. Although the Department is not required to prepare an additional EFIS after the start of the formal rulemaking process, further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35. See L-05-06. | No change. | Economic Analysis |
| W-02-10 | Randy Pollack, for various manufacturers | Within the Economic Study, have you incorporated greenhouse gas reduction that would occur with resin switching? | The GHG reduction is not specifically analyzed in the EFIS. However, it was reviewed in preparation of the California Environmental Quality Act Initial Study and Negative Declaration and is further discussed in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, greenhouse gas emissions related to resin switching to comply with source reduction requirements section, page (??). See L-05-11 | No change. | Economic Analysis |

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| W-02-11 | Randy Pollack, for various manufacturers | On page 36 of the Economic Analysis, there is a summary of estimated benefits and costs related to the amended regulations. Are the costs and benefits based upon the switch in the regulations prohibiting resin switching? | The EFIS includes an analysis of the costs and benefits both allowing and prohibiting resin switching. Although the Department is not required to prepare an additional EFIS after the start of the formal rulemaking process, further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35. See L-05-06. | No change. | Economic Analysis |
| W-02-12 | Randy Pollack, for various manufacturers | Doesn't the amended regulation language say no resin switching? | See L-05-08 | No change. | 17943 (w) |
| W-02-13 | Randy Pollack, for various manufacturers | Most product manufacturers, when buying containers of good size, have their contractual relationships state that you must be in compliance with California laws where the container is being sold. | Comment noted. Comment not specifically directed at the Department's proposed action or procedures. | No change. | 17943 (m) |
| W-02-14 | Randy Pollack, for various manufacturers | I agree with Brock Wanless's point regarding incidental elements; however I would like to expand that so that we discuss overall changes to the definition of RPPC, including clamshells, heat seal, etc. | See L-05-01. | No change. | 17943 (t) |
| W-03-01 | Pansy Leo, Ropack Packaging | The Economic Study seems to assume that a container manufacturer's cost will be fully passed on to the product manufacturer. We are seeing first-hand that a product manufacturer will not accept all of the added costs with a product container made of recycled content when it could be more expensive than virgin resin. | To simplify the analysis, an assumption was made that the added container costs are completely passed on to the manufacturer and consumers. The assumption was made to create a worst-case scenario for product manufacturers and consumers. The elimination of the assumption would reduce the total costs considered within the analysis, because container manufacturers are not required to comply with the product manufacturer mandates of PRC Section 42310. Also, product manufacturers may use one of the other compliance options. | No change. | Economic Analysis |
| W-04-01 | Brock Wanless, Illinois Tool Works (ITW) | Within the Economic Study a Total Cost of all regulatory matters is provided. Is what you are saying here this cost is to all product manufacturers who replied to the survey? (Within the PowerPoint presentation, page 2, first line.) | No. The total cost data shown in the PowerPoint presentation is from the cost model used in the EFIS. The data is not limited to the responses from the manufacturer survey; the total costs are for the entire regulated industry. | No change. | Economic Analysis |
| W-04-02 | Brock Wanless, Illinois Tool Works (ITW) | With regards to the Economic Study, I was not aware the study was available online prior to this workshop. | See W-01-01. | No change. | Economic Analysis |
| W-04-03 | Brock Wanless, Illinois Tool Works (ITW) | Could you please clarify the findings of the Economic Study, specifically as it relates to post-industrial material and how the cost per impacted container was determined to be 4 cents, if you include post-industrial material, and 5 cents, if you exclude post-industrial material? | The question asked is related to the cost of the impacted containers; however the quoted cost of 4 cents and 5 cents were out of context and appear to be related to the cost of the average California resident. In summary, if the use of post-industrial materials is allowed, the study found the cost per impacted container would be 4 tenths of a cent. If the use of post-industrial materials is not allowed the cost per impacted container would be 5 tenths of a cent. The costs related to using post-industrial materials were determined. For consistency the EFIS's findings are based, in part, on the assumptions that five (5) percent of the containers using the postconsumer material compliance option are actually using post-industrial material; that postconsumer material is 20 cents per pound more than the displaced post-industrial material. As a result, the post-industrial material prohibition would increase the cost of the 118.3 million impacted containers by 1.26 cents per | No change. | Economic Analysis |

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| | | | <p>container. For the 38.3 million California residents, the average cost per resident is 4 cents per year. Further, the analysis found that implementation of all proposed regulatory amendments would result in a per container weighted-average increase of about 5 tenths of a cent for the 762.7 million impacted containers.</p> <p>The Office of Administrative Law (OAL) regulations require the Department to consider alternatives to the proposed regulations. One of the alternatives considered was to not ban the use of post-industrial material in the postconsumer compliance calculations. This alternative results in a weighted-average cost for the 554.4 million impacted containers of 4 tenths of a cent per container. The average cost per resident is 5 cents per year.</p> <p>Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Statement section, page 35.</p> | | |
| W-04-04 | Brock Wanless, Illinois Tool Works (ITW) | How did you draw the line between post-industrial and postconsumer for the Economic Analysis? | <p>Postconsumer is material that has completed its economic life and is either recycled or disposed. In past certification cycles manufacturers have been allowed to count post-industrial scrap that was reused within the manufacturing process and was not commonly disposed as postconsumer material in their products' containers, rather than post-industrial material that was disposed if it was (is) not used to produce new containers at the same container manufacturing process. In the proposed regulations, post-industrial scrap will not be counted towards compliance.</p> | No change. | Economic Analysis |
| W-04-05 | Brock Wanless, Illinois Tool Works (ITW) | So as an example, the line between post-industrial and postconsumer for the Economic Analysis considered if a plastic material was being disposed of until Purchaser X came along to buy it? So, if Consumer X went away, and no one was buying it, would it be considered postconsumer again? | See W-04-04 | No change. | Economic Analysis |
| W-04-06 | Brock Wanless, Illinois Tool Works (ITW) | Is the revised definition of Postconsumer Material being put forth solely to align the regulatory definition of postconsumer material with the existing RPPC statutory definition of postconsumer material? | See L-01-01 | No change. | 17943 (m) |
| W-04-07 | Brock Wanless, Illinois Tool Works (ITW) | With regards to Postconsumer Material, how do you determine what is post-industrial vs. postconsumer, and whether or not it is currently being recycled? If industrial scrap is being generated at an industrial commercial facility, and it is going to landfill, it is considered postconsumer. If there is a purchaser or recycler of that same material, it is now post-industrial? | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-04-08 | Brock Wanless, Illinois Tool Works (ITW) | Defining postconsumer material as a product that has met its intended use is a very accurate way to describe it. We are talking about a whole universe of products that meet its intended destination or intended use that cannot be used and cannot be put on the shelf. The definition itself needs to be clarified. With the two paragraphs in the regulations being stricken, there are a lot more gray areas now and more confusion in the marketplace. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |

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| W-04-09 | Brock Wanless, Illinois Tool Works (ITW) | In determining if an existing plastic packaging is post-industrial or postconsumer we need to be consistent. For example, a container that has been labeled, that is intended to be used as a vessel and has not reached the shelf would not necessarily be called scrap, at that point, since it is a finished product in a container. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-04-10 | Brock Wanless, Illinois Tool Works (ITW) | Another example in determining if an existing plastic packaging is postindustrial or postconsumer could include a packaging that has already reached its intended customer and then they discover an error. What do they do with it now? Throw it away or is there a market for it? | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-04-11 | Brock Wanless, Illinois Tool Works (ITW) | Existing plastic packaging such as material overruns and obsolete material are finished products that for one reason or another cannot be sent to the marketplace. This should be considered postconsumer since it will be diverted from landfill disposal. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-04-12 | Brock Wanless, Illinois Tool Works (ITW) | The definition of an RPPC needs further discussion; specifically I think we need further discussion on the metal handle issue. | See L-05-01 and L-05-02. | No change. | 17943 (t) |
| W-05-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Could you clarify the 357 million new containers identified within the Economic Study for me? Are these additional containers that are going to be covered by the law? Are the majority of them paint buckets with metal handles? | These are existing containers that have not been considered to be RPPCs for one of two reasons. The first group consists of nearly 22 million buckets (containing paint, cleaners, adhesives, etc.), that have attached metal handles. The second group is approximately 336 million clamshells that have been sealed and once opened cannot be re-closed. There are additional similarly-situated containers that will become RPPCs but are not included in the cost analyses because the product contained is exempted (e.g., pesticides, food, solvents) from the product manufacturer compliance requirements. | No change. | Economic Analysis |
| W-05-02 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | The Economic Study talks about the impact to California manufacturers selling material in California. The economic impact should not be divided by California; it should be divided across the U.S. - the entire marketplace. | See W-02-04 | No change. | Economic Analysis |
| W-05-03 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Typically postconsumer material is material that has met its intended use. Regrind material has always been a part of the manufacturing process. It does not transfer ownership; it stays within the confines of the manufacturing facility. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-05-04 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Plastic regrind is still scrap. Postconsumer is if it has already been manufactured into a certain product and then that product is reground, regardless of where that product actually has entered into commerce. If someone is just sweeping scraps off the floor and then selling it to them, we would say no, that is not postconsumer. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-05-05 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Plastic is not postconsumer material if someone takes plant scraps off the floor and places them back into the manufacturing process. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-05-06 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | I would assume you are talking about a bill of lading or some consumer transaction record. If the material was in a container form that clearly will allow it to be aligned as postconsumer material in our eyes. | See L-01-01 The product manufacturer certification information (Section 17945.3) and container manufacturer certification information (Section 17945.4) were revised to include examples of types of supporting documentation needed for alternative method container compliance options The Sections clarify that bills of lading, bar codes and SKUs are types of documentation that a product manufacturer may provide to support its compliance claim. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)).and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17943 (m) and 17945.3 |

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| W-05-07 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | In future workshops we would like to discuss the whole enforcement apparatus and how it works within the confines of RPPC and source reduction as an option for a lifetime opt out compliance option. | Staff scheduled and further discussed the enforcement process, and source reduction. See also L-10A-04. | No change. | General |
| W-06-01 | Bill O'Grady, Talco Plastics | When considering when a plastic is either post-industrial or postconsumer, typically it is easy to recognize. There are going to be some cases where you are not going to be able to easily identify if something is postconsumer or post-industrial. In some cases, there is a fine line between what constitutes post-industrial and postconsumer. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-06-02 | Bill O'Grady, Talco Plastics | When considering material postconsumer we need to consider if the material someone is taking back was mislabeled containers after they have sat at a distribution center for a period of time, earmarked for resale? | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-06-03 | Bill O'Grady, Talco Plastics | When considering if material is postconsumer scrap that is generated after it went through a printing process, or a silkscreen process that was mislabeled and ultimately scrapped, we need to ask if the plastic packaging is going to a secondary manufacturer who is going to use that label to wrap a package that contains a product? | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-06-04 | Bill O'Grady, Talco Plastics | In my opinion, postconsumer material can include obsolete product, an overrun that sits in your warehouse, or somebody else's warehouse, or that is no longer a requirement, that has served its intended use. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)).l | 17943 (m) |
| W-06-05 | Bill O'Grady, Talco Plastics | When trying to track the generation of postconsumer material various methods might be needed. If a customer no longer needs a product, there is not going to be a paper trail because that customer is not going to order that product. If the customer declined to purchase this material because they changed their design, and we elected to use this material in a different application, we would like it to count as postconsumer. It may be possible for the customer to sign an affidavit stating that this material was manufactured for its intended use but was not used by the customer. | See L-01-01 | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-07-01 | Richard Harris, Trinity Packaging Corporation | If a customer returns a product because it is defective, would it be postconsumer material from a manufacturer perspective? | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943 (q)). | 17943 (m) |
| W-08-01 | Laurie Hansen, Houston Group | Regarding the development of the regulations moving forward, does the process include coming back with redrafts of the regulations? Specifically at the May 17th workshop will there be a redraft of the resin switching portion only? | The May 17, 2011 workshop allowed continued discussions. Department staff provided as many proposed redrafts as possible. | No change. | General |
| W-08-02 | Laurie Hansen, Houston Group | Based on the discussion and input received at the April 8, 2011 workshop it seems that the RPPC rulemaking is going to be ongoing for awhile before a final package is ready to be submitted to OAL? | There are significant issues to address during the RPPC regulations and the regulations process will take some time. | No change. | General |
| W1-01-01 | George Larson, Illinois Tool Works (ITW) | Please clarify why we need to get a container manufacturer cert for the Alternative Compliance option. It's hard to get these certs unless the Department has asked container manufacturers to supply them. | Per PRC 42325, product manufacturers are required to include in their specifications for RPPCs a requirement that the container manufacturer certify that the RPPCs comply with this chapter. | No change. | 17945.3 (c) |

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| W1-01-02 | George Larson, Illinois Tool Works (ITW) | Could you please clarify why the unit measure used throughout the regulations are in grams? Is this because we're looking at one package? | Grams are used throughout the regulations for consistency and because most of the compliance calculations start with the weight of a single container. | No change. | 17945.3 (d)(1)D) |
| W1-01-03 | George Larson, Illinois Tool Works (ITW) | With regards to postconsumer material, please clarify why we need the proposed level of detail for reporting of where the materials being claimed are from, the resin type, etc. We can tell what type of package it is and the pounds, but it will be very difficult to break it down by SKU or code [e.g., when receive in bales.] | See W-05-06 and L-01-01. | Revised definition of Postconsumer Material (adopted revised Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)) | 17943 (m) , 17945.3 and 17945.4 |
| W1-01-04 | George Larson, Illinois Tool Works (ITW) | If we're securing material that's now postconsumer material (PCM) [per revised proposed definition] because it's obsolete, unused or such, from Company A, do we have to get that company to provide a certification from their container manufacturer? It would be difficult. Typically we would only have information on what we received: volume, type of material, etc. | A container manufacturer certification is not needed as long as the materials would have otherwise been destined for solid waste disposal, and has completed its intended end-use and product life cycle. | No change. | 17945.4 (c)(4) |
| W1-02-01 | Patty Enneking, Klockner Pentaplast | We appreciate the inclusion of the obsolete containers into the definition of postconsumer but ask that you consider leaving the definition as is [including post-industrial material] so it doesn't limit the amount of postconsumer material available for companies to comply with the content requirements. We think there is insufficient PCM available and with the revised definition of RPPC more companies will be looking for it to meet the program requirements. | See L-01-01. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13. | Revised definition of Postconsumer Material (adopted revised Sections 17943(q)). | 17943 (m) |
| W1-03-01 | Brock Wanless, Illinois Tool Works (ITW) | The newly developed subsection 17945.3(j)(i)(3) will be difficult or impossible to comply with as written, specifically getting bar codes and SKUs from the received recyclable plastic feedstock is not possible. A lot of the postconsumer material we receive is in the form of bales that could be a mixture of different postconsumer material but with consistent resin type. So complying with the first two pieces of this requirement are fine but determining bar code or SKUs or such is difficult unless we require recyclers to supply this info. | See L-01-01 and W-05-06. | Revised definition of Postconsumer Material (adopted revised Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17943 (m), 17945.3 and 17945.4 |
| W1-03-02 | Brock Wanless, Illinois Tool Works (ITW) | Is the Department willing to require California recyclers from whom companies obtain postconsumer material to produce bar codes, SKUs or other descriptions? It seems impractical as the material comes in bales. | See W-05-06. | Revised definition of Postconsumer Material (adopted revised Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c))...3 | 17943 (m), 17945.3 and 17945.4 |
| W1-04-01 | Chris Cleet, ITIC | We're concerned that the revised definition of RPPC to include more containers (such as blister packs and clamshells) doesn't take into account the different needs and uses of the packagers and packaging and will negatively affect retailers and consumers by resulting in more broken and damaged product [as more containers will have to contain PCM]. We request that Department remove 17943(t)(2) from regulations. | See L-05-01. | No change. | 17943 (t) |

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| W1-04-02 | Chris Cleet, ITIC | The electronics industry has in the past had difficulty obtaining high quality postconsumer recycled plastic, and is concerned about whether there will be adequate supply to use in the newly regulated containers. | See L-05-03. | No change. | 17943 (t) |
| W1-04-03 | Chris Cleet, ITIC | The electronics industry has also had quality concerns re: plastics contamination which may run afoul of laws banning sale of products with certain chemical components. | PRC Section 42330 allows the Department to grant a waiver from the postconsumer material content requirement of PRC Section 42310, but does not allow the Department to waive compliance through one of the other compliance options. Adopted revised regulations Subsection 17944 (a)(1) is consistent with PRC Section 42330. | No change. | 17943 (t) |
| W1-05-01 | Katt Fretwell | Will a blister fronted package with a paper backing sheet be considered an RPPC under the proposed definition? | See S-09-01. | No Change. | 17943 (t) |
| W1-06-01 | Randy Pollack, for various manufacturers | Re: the revised RPPC definition, while we understand the intent to level the playing field, I think you'll find (in looking at past certifications) that it's difficult for clamshells to comply with the law as they're usually introduced at the lightest possible weight, and it's very difficult to use postconsumer material in them due to issues such as Chris Cleet raised--contamination and clarity. | See L-05-01, L-05-02, L-05-03 and S-04-02. | No change. | 17943 (t) |
| W1-06-02 | Randy Pollack, for various manufacturers | I am concerned that the Department will not be able to handle the additional billions of containers that will come in under the new RPPC definition. I will supply statutory references and Integrated Waste Management Board Meeting references on why the number of containers is limited | See L-05-01. The Department received no statutory references or Integrated Waste Management Board Meeting references for review. | No change. | 17943 (t) |
| W1-06-03 | Randy Pollack, for various manufacturers | With the expanded definition of an RPPC, how will the Department have the staff to review all the materials you could get and to notify all the companies now subject to the law? It's going to create an even more unworkable program. | See L-05-01. | No change. | 17943 (t) |
| W1-07-01 | Pansy Leo, Ropak Packaging | The intent of a level playing field is good, however, from a practical standpoint we need to make sure there is a sufficient quantity of good quality recycled materials before we expand the definition to include additional containers in the definition. | See L-05-01 and L-05-03. | No change. | 17943 (t) |
| W1-08-01 | Mark Murray, Californians Against Waste | CalRecycle studies show that under our bottle and can recycling law, some 450 million pounds of PET are collected, we have 220 million pounds of processing capacity in state, and that more end use markets for this materials is needed. Non-bottle and nonfood PET generated packaging in California is 36 million pounds. We're processing enough PET in California to meet minimum recycled content requirements not just for California but for RPPCs nationwide. So there is definitely not an issue in terms of supply of, or processing capacity for PET RPPCs. | See L-14-01. Commenter supports adopted revised regulations regarding addition of virtually identical containers in adopted revised regulations section 17943(aa). | No change. | 17943 (t) |
| W1-09-01 | Kurt Ulmer, Sashco, Inc. | The newly developed subsection 17943 (t)(3)(a), is not considering or addressing containers being made for collapsibility for less landfill impact? | See L-05-01 and See L-12-01. | No change. | 17943 (t)(3)(a) |

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| W2-01-01 | Randy Pollack, for various manufacturers | Why is the request for advisory opinions (for clarification about whether their items may be RPPC) limited to 60 days? Sixty days is fairly short for companies if they're just figuring out what the law is in California, and by the time they sort or review their listings of containers that may or may not be RPPCs, it may take some time to compile that information to present to the Department. We'd like to see six months. | There are thousands of product manufacturers and many of them have multiple products packaged in RPPCs. The Department does not have the staff resources to determine whether a particular product packaging must meet the RPPC requirements any time a product manufacturer requests a determination. Limiting advisory opinions to the pre-certification and certification processes will help to ensure the number of requests the Department receives is manageable for a given certification cycle. The regulations were revised to provide product manufacturers two opportunities to request an advisory opinion from the Department: within 90 days of receiving a pre-certification notice, and, for containers introduced after that time, within 90 days of receiving a certification notice. Companies will be aware of the program having been notified when we first identified them, and when these regulations first go into effect. | Adopted revised Section 17948.2 allows 90 day windows for requesting advisory opinions. | 17948.2 |
| W2-01-02 | Randy Pollack, for various manufacturers | The regulations allow for an additional 30 day extension (for submitting the certification). In previous years we said we needed 45 or 60 days and Department could only give 30 days. Could you increase this to give the Department more flexibility when there are some unique situations where a company may need additional time? | See L-07-08 and L-05-07. | No change. | 17945.2 (d) |
| W2-01-03 | Randy Pollack, for various manufacturers | In the PCM formula, where you talk about "lines" are you talking about container lines, and when you multiply it out you're talking about individual containers? | The formulas are structured to start with the weight of a single container. This is then multiplied by the number of such containers, of that specific size, used for placement of a product. Through the packaging process multiple "lines" may be operating using the same single container with placement of the same product. These multiple lines are added together to determine the total number of RPPC used per calendar year. | Added definition of container line, product line, and product sub-line (adopted revised regulations Section 17943(c), (s) and (u)). | 17945.5 (b) |
| W2-01-04 | Randy Pollack, for various manufacturers | To us, sometimes a "line" is a line of products, and you might have four lines of products. I just want to make sure it's clear that it's the number of items in that line of products that you're multiplying by. | See W2-01-03. | Added definition of container line, product line, and product sub-line (adopted revised regulations Section 17943(c), (s) and (u)). | 17945.5 (b) |
| W2-01-05 | Randy Pollack, for various manufacturers | To clarify is the Department saying measurement for the PCM formula is based on container line or separated [product] lines. | See W2-01-03. | Added definition of container line, product line, and product sub-line (adopted revised regulations Section 17943(c), (s) and (u)). | 17945.5 (b) |
| W2-01-06 | Randy Pollack, for various manufacturers | To further clarify container line and product line, if you have different SKUs for the same size container but with scented, lemon, something else slightly differing about the product in it how will that be measured? | A SKU might distinguish a container line but only if there is no other differences such as product contained or labeling. CalRecycle didn't want to tie the regulations to a specific system (e.g., SKUs) that may change or that doesn't necessarily uniquely identify the container. | Revised Section 17943 and 17945.3. | 17945.5 |
| W2-01-07 | Randy Pollack, for various manufacturers | I will be forwarding a copy of the Exxon Mobil study, which looked at the gradual incorporation of 25% blow-molded or fractional melt HDPE in conjunction with virgin HDPE material, | The study provided is a PowerPoint presentation. It cites papers that were not provided for review. There is a disclaimer at the end by Exxon Mobil Chemical that the presentation does not guarantee the typical (or other) values within the presentation. The Department could not analyze this information. | No change. | 17943 (t) |

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| W2-01-08 | Randy Pollack, for various manufacturers | If you have a company that can switch from a PET to a HDPE, from an HDPE to a PET or an HDPE to a polypropylene and reduce the amount of plastic used by 20 or 30 percent I think that is something that is of value to CalRecycle. It think its value to the community, it's a value to reducing the amount of plastic that we're using. Also it helps in reducing the amount of greenhouse gas emissions. So I think that is also one thing that we need to look at, is that you can have a huge reduction in the amount of plastic being used by companies if they choose to do it, going from HDPE to polypropylene. | See L-05-08 and L-05-11 | No change. | 17943 (w) |
| W2-01-09 | Randy Pollack, for various manufacturers | We believe disallowing resin switching would be a disincentive to manufacturers to reduce the amount of plastic they use, which is the major principle of the Department. | See L-05-08 and L-05-11. | No change. | 17943 (w) |
| W2-01-10 | Randy Pollack, for various manufacturers | The law provides several compliance options, one of which is source reduction. I understand Steve Alexander's point about using more recycled materials but I don't believe there have been a lot of companies doing resin switching in the past or that they're suddenly going to start to do it so we shouldn't eliminate that option for companies that want to make that investment. | Statute does not allow resin switching. See L-05-08 and L-05-11. | No change. | 17943 (w) |
| W2-01-11 | Randy Pollack, for various manufacturers | We should look at if there is a disincentive for people to concentrate products, which typically leads to smaller containers for the product, if they can't take advantage of certain parts of the law. | See L-07-09. | No change. | 17943 (w) |
| W2-01-12 | Randy Pollack, for various manufacturers | If a company wants to comply using the Source Reduction- Comparison to Similar Products Compliance (Subsection 17945.3 (c)(4)) could they compare a container to a similar one? Specifically, could one container be PP and the other one be HDPE (that is, they're different resin types), is that allowed? | The adopted revised regulations definition of "Similar Rigid Plastic Packaging Containers" (Section 17943 (aa)), would not allow two containers of different resin to be compared. It states the similar package must be "alike in material type, shape and volume." | No change. | 17945.3 (c)(4) |
| W2-01-13 | Randy Pollack, for various manufacturers | I would like to voice once again the concerns I have with the extensive definition of RPPC. | See L-05-01, L-05-02 and L-05-03. . | No change. | 17943 (t) |
| W2-01-14 | Randy Pollack, for various manufacturers | With regards to the packaging containers, the statute clearly states that only containers that are between 8 oz and 5 gallons fall within the law. The previous speaker was concerned that a labeled capacity of less than 8 oz or greater than 5 gallons (example 5.01 gallons) would create an exemption for the product. Several years ago there was a lot of discussion on this and it has always been agreed that the statute is very clear. | Per statute (PRC 42301 (f)) an RPPC has a minimum capacity of 8 fluid ounces or its equivalent volume, and a maximum capacity of 5 fluid gallons or its equivalent volume. This issue was discussed in the informal rulemaking process and staff deleted language that was not consistent with the statute cited above. | No change. | 17943 (t) |
| W2-02-01 | George Larson, Illinois Tool Works (ITW) | ITW compliments & commends staff for development of the pre-certification process. The pre-certification process will makes the process for which the regulated community informed, knowledgeable & prepared to respond to the law. | Comment noted. Commenter supports addition of the pre-certification process in adopted revised regulations Section 17945.1. | No change. | 17945.1 |

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| W2-02-02 | George Larson, Illinois Tool Works (ITW) | The priorities for selecting companies to do a certification, states that it is "a random selection of product manufacturers that have previously been selected for certification and have been found in compliance". This seems to elevate someone who's already certified to be more likely to be selected again. I think if you've demonstrated compliance, you should just go back into the universe of companies. | See-L-06-05 and W2-03-01 | No change. | 17945.1 (b) (3) |
| W2-03-01 | Bill O'Grady, Talco Plastics | What is the selection process and who is in the pool, and what constitutes a new company as opposed to an existing company, and how are you going to identify new companies? | The Department maintains a database of product manufacturers which sell products in RPPCs in California. Once the rulemaking is complete, CalRecycle will implement an outreach program notifying impacted product manufacturers of the RPPC requirements. CalRecycle will also maintain an ongoing effort to identify any additional product manufacturers that appear to be subject to the program. All companies are in the database and may be selected. Cal Recycle will determine the proportion of companies for each portion of the selection hierarchy: previously selected and not yet found in compliance; never selected to certify compliance; and previously selected and found in compliance. The companies in the never selected and previously selected and found in compliance will be randomly selected for the certification. See also L-06-05 regarding use of compliance history. | No change. | 17945.1 |
| W2-03-01A | Bill O'Grady, Talco Plastics | In implementing the selection process are you going to use SIC codes or such and randomly select? | See W2-03-01. | No change. | 17945.1 |
| W2-03-02 | Bill O'Grady, Talco Plastics | Is the size of the pool of companies selected for certification down [compared to past]? | The size of the annual certification cycle pool is anticipated to be 100 product manufacturers, depending on staff resources. This is consistent with what has occurred for the last several cycles. The size of the pool could also be impacted by the amount of program resources available. | No change. | 17945.1 |
| W2-03-03 | Bill O'Grady, Talco Plastics | When calculating the compliance options, are they product specific? | See W2-01-03. | Added definition of container line, product line, and product sub-line (adopted revised regulations Section 17943(c), (s) and (u)). | 17945.5 (b) |
| W2-03-04 | Bill O'Grady, Talco Plastics | Can we clarify what a product line and product sub-line are ? Is a SKU used to differentiate products? Or, if it's the same size bottle used for different "product" (if it's generic and a scented product- with different SKU) is that one product, or two? | See L-10A-02, and W2-01-06. | Revised definition of Postconsumer Material(adopted revised Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17945.5 |
| W2-03-05 | Bill O'Grady, Talco Plastics | I think we're all comfortable with the definition of product line, adding clarity by emphasizing more product-specific. Maybe expand your definition or add to examples that it's a product-specific example, or the SKU would be product-specific. | See L-10A-02 and W2-01-06. | Revised definition of Postconsumer Material(adopted revised Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17943 (s) |

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| W2-03-06 | Bill O'Grady, Talco Plastics | Could you clarify why the proposed definition for Rigid Plastic Packaging Container (RPPC) provides for the optional reporting of closures? Was that part of statute? | See W2-05-03. | No change. | 17943 (t)(2) |
| W2-03-07 | Bill O'Grady, Talco Plastics | I have a concern regarding resin switching and any permanent opt-out from a compliance standpoint. The use of the virgin PP is one-time, and not sustainable from a recyclability standpoint. The statute specifically states that a packaging change should not adversely affect recyclability of an RPPC or affect the potential recyclability of the package. | See L-05-08. | No change. | 17943 (w) |
| W2-03-08 | Bill O'Grady, Talco Plastics | My point regarding resin switching is that if we allow it there will be no demand for postconsumer material and no reason to collect it, where is that package going to end up? So from a sustainability standpoint a permanent exemption that creates no demand and negatively affects its recyclability doesn't make a lot of sense, and I can't see anybody arguing that it's not going to adversely affect the existing recycling infrastructure in California. | See L-05-08 and L-10A-04. | No change. | 17943 (w) |
| W2-03-09 | Bill O'Grady, Talco Plastics | I want to clarify what Patty Enneking is asking about post-industrial scrap. If we're speaking to the definition of postconsumer material, that's defined in statute as "material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle," so what additional clarification to that is needed? I think the material she refers to has not completed its intended end-use and/or product life cycle. | See L-01-01. | No change. | 17943 (m) |
| W2-03-10 | Bill O'Grady, Talco Plastics | Regarding post-industrial scrap I think the distinction that needs to be considered from statute is where it says "commonly disposed and not commonly reused within an original manufacturing process..." as this material we are discussing would go into a similar container if recovered? I think some clarification is needed. We may have an issue with scrap plastic falling under postconsumer if it hasn't had some sort of reference to intended end use and life cycle, as statute says. | See L-01-01. | No change. | 17943 (m) |
| W2-03-11 | Bill O'Grady, Talco Plastics | I thought part of the RPPC definition was the minimum and maximum capacities (8 oz to 5 gal). Does that still stand? Or 5.01, anything over five gallons is considered outside the definition of an RPPC? | See W2-01-14. | No change. | 17943 (t) |
| W2-03-12 | Bill O'Grady, Talco Plastics | To clarify, the regulations currently give the option to include the closure or not, but if that isn't addressed in statute do we need some clarification? | See W2-05-03. | No change. | 17943 (t)(2) |
| W2-04-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | We commented on this a few years ago and wish to reiterate that we think product manufacturers wishing to sell in California should supply an annual report certifying their compliance with the law. And then from that group, the Department would select a number of companies to audit/follow-up with. This would address the problem of companies playing "the lottery odds" [of not complying because unlikely to be selected to certify]. | See L-10A-01. | No change. | 17945.2 |

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| W2-04-02 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | To further clarify container line and product line; are we talking about SKUs, because if a product has a different size, it's a different SKU? | See W2-01-06. | Revised definition of Postconsumer Material(adopted revised regulations Section 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17945.5 |
| W2-04-03 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Are the penalty formulas, per line of product with a maximum penalty of \$50,000? That's not high enough. Some companies will do a cost-benefit and decide not to comply because penalty is only \$50,000. | The regulations reflect the statutory limits of PRC section 42322. This section specifies the overall penalty amounts of up to \$100,000 for any violation of the Chapter, and up to \$100,000 for civil penalties, which may be up to \$50,000 per violation. | No change. | 17949 (d) |
| W2-04-04 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Some have stated that resin switching will reduce the amount of plastic used in RPPCs. This would allow the use of more virgin material rather than recycled material. From studies referenced today, using recycled material can greatly reduce greenhouse gas emissions [Referring to the data from Franklin Institute study.] Allowing resin switching provides no incentive to use recycled material and to increase investment in recycling. The intent of the statute was to encourage recycling; resin switching leaves no requirement to recycle containers. | See L-05-08 and See L-05-11. The commenter makes general statements about life cycle studies, so the Department is unable to review and analyze specific information to reach a conclusion. The commenter provided a copy of the Franklin Associates Life Cycle Inventory of 100% Postconsumer HDPE and PET Recycled Resin from Postconsumer Containers and Packaging at the 3 rd workshop and for a response see L-05-13 and W3-04-01. | No change. | 17943 (w) |
| W2-04-05 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Resin switching alone cannot achieve the 10% reduction required for Source Reduction. The density of high density vis-à-vis the density of polypropylene only gets you a 7% reduction. So there would still have to be some additional reduction in the material in order to meet the 10% reduction. You can resin switch, but let's make sure that we continue to instill in the requirement some utilization of postconsumer recycled material because that's what the law was originally designed to foster. | Comment noted. See L-05-08 and L-05-11. | No change. | 17943 (w) |
| W2-04-06 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | There's tremendous amount of investment going into the segregation of postconsumer polypropylene (PP). One of our members is opening up a new \$4 million wash line just for PP that's going to be able to produce 60 million lbs. a year. If you allow resin switching there won't be any investment in new technologies to further separate recycled plastics impacting the marketplace since there would be no incentive to use recycled material. | See L-05-08 and L-05-11. | No change. | 17943 (w) |
| W2-04-07 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | I wanted to clarify something related to Pansy Leo's comment about source reduction and her reducing a container's weight by 20 to 25%. Earlier I mentioned a 7% density by volume reduction of material. We are actually talking about two different figures. | See L-05-08 and L-05-11. | No change. | 17943 (w) |

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| W2-04-08 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Per Franklin Associates, based on their 2010 study, even giving source reduction of 10%, the use of virgin PP has a much greater environmental burden than HDPE plus recycled content. I think there's differences in GHG emissions, they're almost 6% higher, the difference in total energy consumption are 11% higher, the difference in expended energy from the entire production is 7.3% higher, and from an overall solid waste management perspective the use of virgin PP without RC is 10.5% higher than using HDPE with recycled content. We will provide a copy of that report to you (received report). | See L-05-11. APR submitted a more up-to-date version of this study at a later meeting. See response W3-04-01 for comments on the more up-to-date study. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option section, page 4, and the greenhouse gas emissions related to resin switching to comply with source reduction requirements section, page 6. | No change. | 17943 (w) |
| W2-04-09 | Steve Alexander, Assn of Plastic Recyclers | I'm concerned that scrap, which has never been included in the definition of postconsumer material, is being considered. Scrap hasn't met its intended use and is waste. Who is going to audit the line between scrap and post-industrial? | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943(q)). | 17943 (m) |
| W2-05-01 | Parham Yedidsion, Envision Plastics | As we discuss the compliance formulas I have to ask if the product is identified by its individual SKU. If this is the case, then in effect each SKU is a different product, so instead of referring to it as a product line, why don't we just refer to it as a product's key? | See W2-01-06. | Revised definition of Postconsumer Material (adopted revised regulations Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17945.5 |
| W2-05-02 | Parham Yedidsion, Envision Plastics | With regards to the compliance formulas, maybe there should be a definition put in for line of products that would say SKU and so on for clarification. But what if there is a new SKU? | See W2-01-03 and W2-01-06. | Revised definition of Postconsumer Material (adopted revised regulations Sections 17943(q)) and Product Manufacturer Certification Information and Container Manufacturer Certification Information (adopted revised regulations Section 17945.3 (e)(1)(F)(4)(c) and Section 17945.5 (a)(3)(e)(4)(c)). | 17945.5 |
| W2-05-03 | Parham Yedidsion, Envision Plastics | Does the weight of the packaging include the closure? | Per adopted revised regulations Section 17943 (aa)(2), closures such as plastic caps, lids, handles and hinges may be included at a product manufacturer's discretion. The discretion was provided in regulations in recognition that the closure may be of a different resin than the container and thus complicate determination of compliance. Additionally, these elements have been shown to be incidental to the total weight of a container and have not impacted the calculation of compliance. | No change. | 17943 (t)(2) |
| W2-05-04 | Parham Yedidsion, Envision Plastics | I think that the closure is part of a package, not a separate entity. Statute does not say it is not part of the package. It goes under the SKU, so I don't see why it's optional. It is part of the total weight of the package. | Statute does not address closures. The purpose of regulations is to clarify statute. Including closures as part of an RPPC has been optional since the first RPPC regulations were adopted in 1994. No compliance issues have been identified related to closures as explained in W2-05-03 and W2-01-06. | No change. | 17945.5 |

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| W2-05-05 | Parham Yedidsion, Envision Plastics | I concur with Steve Alexander's comment about the maximum penalty that can be issued. But I think larger size companies who have a corporate image: that matters more than non-compliance. It's the smaller companies we should worry about. The negative press that could come out is threat enough for them. | See W2-04-03 | No change. | 17949 (d) |
| W2-05-06 | Parham Yedidsion, Envision Plastics | I am concerned as to why the recycling rate is still being referenced here within the penalty calculations. | The commenter's reference to "recycling rate" was in the original (1991) statute which required an annual determination of a PET recycling rate and the all-container recycling rate. The PET and all-container recycling rate requirement (PRC Section 42324) was eliminated from the statute in 2005 (Stats. 2004, c. 561 (S.B. 1729)). Within the statute (PRC section 42310 (b)) compliance can still be achieved if a product specific container is determined to be at a 45 percent recycle rate. | No change. | 17949 |
| W2-05-07 | Parham Yedidsion, Envision Plastics | Reading PRC 42300(j) we learn that the intent of the statute is clearly to spur markets for plastic materials collected by recycling. While source reduction is one of the items we look for, the statute clearly states that implementation of the law cannot affect recyclability. There have been various comments made throughout this rulemaking and various data on availability of recycled materials but let's not pretend resin switching is the right thing to do when companies want it so they can opt out of complying with using recycled content. No one is saying don't resin switch, or avoid technological advancement, we have those options. But realize you still have to comply with RPPC law and put in PCM. | Comment noted. The commenter makes general statements about data, so the Department is unable to review and analyze specific information to reach a conclusion Commenter supports eliminating resin switching as a source reduction compliance option (adopted revised regulations Section 17943(af)). | No change. | 17943 (w) |
| W2-05-08 | Parham Yedidsion, Envision Plastics | We talk about concentration...The detergent industry concentrated their packaging. That didn't stop them from using recycling content. In fact, they have looked at ways of increasing their recycled content. We have several customers that are doing that. I commend them for doing it. Some of them are the largest corporations in America. | Comment noted. Comment not specifically directed at the agency's proposed action or procedures. | No change. | 17943 (w) |
| W2-05-09 | Parham Yedidsion, Envision Plastics | Why should a pail be exempt from the RPPC law because of a metal handle? I support developing the definition of an RPPC to create a level playing field. | Comment noted. Commenter supports changes in the definition of an RPPC (adopted revised regulations Section 17943(aa)). See L-05-01 | No change. | 17943 (t)(1)(A) |
| W2-05-10 | Parham Yedidsion, Envision Plastics | What is the official stance at this point as to what qualifies as post-industrial? I see we have a clause allowing for obsolete materials to be considered postconsumer. It would be nice, if needed, to have a specific clause that says post-industrial materials are not postconsumer. | See L-01-01. | Revised definition of Postconsumer Material (adopted revised regulations Section 17943(q)). | 17943 (m) |
| W2-05-11 | Parham Yedidsion, Envision Plastics | If the labeled capacity says 5.01, it's exempt? My understanding of the spirit of the statute is that when it says "5 gallons" it meant a typical 5 gallon container. It wasn't for someone to be able to squeeze out of the law with a 5.01 or 5.1 container. How do we address that? | See W2-01-14 | No change. | 17943(t) |
| W2-05-12 | Parham Yedidsion, Envision Plastics | And related to something I mentioned earlier, a package is inclusive of its lid or hinge or handle (e.g., the lid is not sold under a separate SKU). I haven't seen in statute where it allows it not to be included. | See W2-05-03. | No change. | 17943 (t)(2) |
| W2-06-01 | Tim Shestek, American Chemistry Council | If I understand this correctly, the resin switching option has been available as a compliance option for product manufacturers since the law was passed? | Resin switching was not expressly prohibited under the original RPPC regulations (1994). | No change. | 17943 (w) |

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| W2-06-02 | Tim Shestek, American Chemistry Council | I would like to clarify that the proposed language for Source Reduced Container would not allow resin switching as a means to “get credit” for compliance? | See L-05-08. | No change. | 17943 (w) |
| W2-06-03 | Tim Shestek, American Chemistry Council | I'm going to submit a couple of documents that Patty Moore & Assoc. have developed at our request in terms of the growth of non-bottle rigid recycling over the past few years as well as the access that folks have in terms of their ability to recycle some of the products. The data is from national figures. The documents support the fact that there has been growth of non-bottle rigid recycling over the past few years. We would like the Department to consider this as the rulemaking moves forward. Provided 2009 National Report on Postconsumer Non-Bottle Rigid Plastic Packaging (Prepared for the American Chemistry Council by Moore Recycling Associates, February 2011) and 2010 California Non-Bottle Rigid Plastics Recovery in 2010: Communities and MRFs (Moore Recycling Associates, Inc., September 15, 2010) . | Based on the Department’s re-evaluation of statute regarding the definition of material type and sourced reduced container (described above), the Department found that statutory requirements that pre-date the RPPC Act of 1991 were not considered in the development of Integrated Waste Management Board’s 1994 RPPC regulations and ultimately concluded that resin switching was not permissible based on the statutory requirements. Therefore, the Department could not consider alternatives which permitted resin switching. | No change. | 17943 (af) |
| W2-06-04 | Tim Shestek, American Chemistry Council | Based on the studies I will provide (listed in summary of comment W2-06-03), you will see that California has an increased ability to move non-bottle rigid plastics from a consumer through the recycling stream. Eliminating resin switching as a compliance option does not make sense to me, especially considering this option has been in effect for the last 15-16 years. I'm not certain I understand how resin switching would have a detrimental impact on the ability to recycle product because I see have seen an evolution of the whole recycling infrastructure over the past few years. | See L-05-08. | No change. | 17943 (w) |
| W2-07-01 | Pansy Leo, Ropack Packaging | With the expansion of the RPPC definition to include additional products and their packaging, will any feasibility study be completed to see if there are sufficient quantities of PCR material in the marketplace for container manufacturers to use if we can't get credit for resin switching? Because we don't know where our pails will be sold we have to treat them all as if they'll be sold in California and we can't get enough injection grade PCR today, let alone after more containers are subject to the law (because those with metal handles are no longer excluded, for example). We ask for quotes and put out purchase orders and can't find the supply. | See L-05-03. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, availability of postconsumer material section, page 13 and the updated Economic and Fiscal Impact Statement section, page 35. | No change. | 17943 (t) |
| W2-07-02 | Pansy Leo, Ropack Packaging | I would like to share with the Department an Exxon-Mobil white paper about the quality of 25% blow-molded or fractional melt HDPE PCR. This study shows a reduced container strength in conjunction with virgin HDPE when they go up to 25%, the process ability of pails drops by 30%. Provided PSCI White Paper Committee 25% PCR Content Proposal ExxonMobil Technical Input (C.K. Schram, ExxonMobil Chemical, April 2006) | See W2-01-07. | Revised definition of an RPPC | 17943 (t) |

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| W2-07-03 | Pansy Leo, Ropak Packaging | I want to support Randy Pollack's comment that there is not going to be a big movement of people in our industry to use resin switching as a compliance option. To go from high density polyethylene (HDPE) to polypropylene (PP) in a pail takes a significant capital investment-- about \$150K and the lead time is about 23 weeks. The business would need to make a new mold, address the shrinkage differences between HDPE and PP affect the sizing of the pail and the sealability of the lid--so you can't just use the HDPE mold and shoot PP into it. | Statute does not allow resin switching. See L-05-08 and L-05-11. | No change. | 17943 (w) |
| W2-07-04 | Pansy Leo, Ropak Packaging | Ropak has developed a diamond weave technology where we can switch from HDPE to PP by using a lattice structure on interior container walls to reduce their thickness. And a third party has verified that we are able to reduce the package weight 20 - 35% (more than Steve Alexander's 7% figure in W2-04-07). If needed we can provide the department the supporting documentation. Provided Environmental Impact of 5 Gallon Pail Systems (Dr. Brian Coleman, Simply Sustain, September 2009) | Comment noted. See L-05-08 and L-05-11. The study provided is a PowerPoint presentation. It does not cite studies as the basis for the conclusions and gives percentages, but not numbers on which the percentages are based. The Department could not analyze this information. Based on the Department's re-evaluation of statute regarding the definition of material type and sourced reduced container (described above), the Department found that statutory requirements that pre-date the RPPC Act of 1991 were not considered in the development of Integrated Waste Management Board's 1994 RPPC regulations and ultimately concluded that resin switching was not permissible based on the statutory requirements. Therefore, the Department could not consider alternatives which permitted resin switching. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option page 4 and the greenhouse gas emissions related to resin switching to comply with source reduction requirements, page 6. | No change. | 17943 (w) |
| W2-07-05 | Pansy Leo, Ropak Packaging | We know source reduction is at the top of the hierarchy for waste management, and at Ropak we've contracted for a life cycle inventory of our diamond weave pail compared to our 20% source reduced pail and also an HDPE pail with 50% recycled content, and looked at the cradle to disposal cycle and found the biggest impact on CO2 emissions and nonrenewable energy use was in the raw material production. So it really benefits us to use less petroleum dependent raw materials, and source reduction by switching resins still has the benefit of less greenhouse gases and less nonrenewable energy use. So why do away with resin switching? | See L-05-08 and See L-05-11. | No change. | 17943 (w) |
| W2-08-01 | Teresa Bui, Californians Against Waste | Several comments have been made about the availability of PCR. We have data showing there is enough PCR in the market - I think about 400 million pounds for PET and 150 million pounds for HDPE, and 225 thousand pounds for PP. And we have data demonstrating there is greater supply than current demand for PCR. | See L-05-09 and L-14-01. | No change. | 17943 (t) |

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| W2-09-01 | Patty Enneking, Klockner Pentaplast | This is a complex issue and there are unintended consequences potentially from not allowing resin switching. [She did a demonstration to show how hot water dissolves a starch-based plastic tray.] Resin switching allows for plastic innovation. This product (starch-based, 90 - 95% from renewable resources) would (if bigger) have to comply with the law and could not achieve compliance by any measure other than source reduction as you can't put recycled material in it technically. If moving to this resin type becomes a "new product" then you wouldn't be able to change to this resin. If you allow resin switching you enable products like this to enter the market. | See L-05-08. Additionally, bioplastics have been presented to the Department as a plastic resin. The statutes do not explicitly exclude any type of plastics. There are several other options which can be utilized to achieve compliance. | No change. | 17943 (w) |
| W2-09-02 | Patty Enneking, Klockner Pentaplast | I understand the HDPE/PP discussion but I think the issue is bigger than that. A decision about resin switching will impact every single resin not just HDPE and PP so we want to make sure you consider that. | See L-05-08 and L-05-11. The compliance options are not specific to resin type. HDPE and PP were used in our workshop presentation as a common example of resin switching. The department, as part of our analysis, did consider the impacts on all resin types. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option section, page 4. | No change. | 17943 (w) |
| W2-09-03 | Patty Enneking, Klockner Pentaplast | I previously (in another workshop) commented why we should continue to allow material that is commonly disposed and not reused to count [as postconsumer]. I looked for the statutory authority for postconsumer and found that statute defines postconsumer material as materials that would otherwise be destined for solid waste disposal. It doesn't distinguish between manufacturing waste and postconsumer waste. So I think the existing regulations (including industrial scrap as postconsumer) are consistent with statute, and consistency is what product manufacturers want (consistency with other laws and regs). But there's a subtle difference between the proposed language to not count material that is "commonly reused within an original manufacturing and fabrication process" and to not count material that is commonly disposed. | See L-01-01. | No change. | 17943 (m)(3) |
| W2-09-04 | Patty Enneking, Klockner Pentaplast | While participating in early '90s discussion about the regulations when they were first being made, the product manufacturers wanted consistency with other laws and regulations that they have to abide by. And one is the Federal Trade Commission (FTC) Green Marketing Guidelines. The guidelines say that recycled content claims may be made only for materials that have been recovered or diverted from the solid waste stream during the manufacturing process or after consumer use. It further states that if a manufacturing waste is used as recycled content, the manufacturer must have substantiation for concluding that the manufacturing waste would otherwise have entered the solid waste stream. Consistent with the RPPC statute, the guidelines excludes from recycled content spilled raw material and scrap that are minimally reprocessed and put back in the production of the same product. So, essentially what the guidelines says and what the RPPC regulation says is one and the same. Provided Part 260 – Guides for the use of Environmental Marketing Claims (Federal Trade Commission Green Guidelines) (Federal Trade Commission, October 2011. | The Federal Trade Commission's Green Marketing Guidelines are strictly a voluntary business practice and deal with substantiating environmental marketing claims. They are not mandated by the Federal Government and can be changed by others at any time. CalRecycle is working to develop regulations that clarify the RPPC statute, (Public Resources Codes 42300, et seq) and do not refer to documents that may be changed by others at any time. | No change. | 17943 (m) |

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| W2-09-05 | Patty Enneking, Klockner Pentaplast | I think there's confusion in the marketplace regarding post-industrial scrap. A better explanation of this material is needed. Specifically, Klockner Pentaplast is only supportive of a definition that recognizes and supports counting all commonly disposed plastic as postconsumer material. | See L-01-01. | No change. | 17943 (m) |
| W2-09-06 | Patty Enneking, Klockner Pentaplast | I would say that if a plastic material is going to the landfill, it has fulfilled its intended end-use, and it's a waste meeting the definition of postconsumer material. | See L-01-01. | No change. | 17943 (m) |
| W2-09-07 | Patty Enneking, Klockner Pentaplast | In response to Bill O'Grady, the post-industrial scrap plastic material I have been talking about would meet the definition of postconsumer material since it could go into anything once the material reaches the recycling stream. | See L-01-01. | No change. | 17943 (m) |
| W2-10-01 | Brock Wanless, Illinois Tool Works (ITW) | ITW is supportive of the proposed language within the definition of Source Reduced Container, which eliminates resin switching as a compliance option. We do not see a particular problem with the change. | Comment noted. Commenter supports eliminating resin switching as a source reduction compliance option (adopted revised regulations Section 17943(af)). | No change. | 17943 (w) |
| W2-10-02 | Brock Wanless, Illinois Tool Works (ITW) | ITW fully supports the new definition of postconsumer material. I thought we had an agreement among the parties at the last meeting. It's always been our belief that scrap was not postconsumer material, and I'm not inclined to reopen that discussion. | Comment noted. Commenter supports revised definition of postconsumer material (adopted revised regulations Section 17943(q)). | No change. | 17943 (m) |
| W3-01-01 | Randy Pollack, for various manufacturers | We will be providing you additional information regarding resin switching. We believe changing something after 18 years is not justifiable. | See L-05-08 and L-05-11. The studies referred to were provided by Pansy Leo of Ropak and the response is provided in W2-01-07 and W2-07-04. | No change. | 17943 (f) and (w) |
| W3-01-02 | Randy Pollack, for various manufacturers | I am very concerned about companies being penalized for acquiring another company that may not be in compliance, or when they do their corporate averaging, they may not be in compliance. We would suggest a two-year time period for those companies to provide them time to come into compliance. | With the addition of the precertification process, companies will receive notice a year before they may be asked to certify compliance. During the precertification process a company can begin to gather information /take action on any corporate acquisitions. This is a liability that must be considered during acquisition. Waivers for acquisition are not in statute, and granting them could create a loophole. Some containers may qualify for waivers as explained in L-06-07 and L-07-11A. | No change. | 17946 |
| W3-01-03 | Randy Pollack, for various manufacturers | I do not believe the Department's definition of "concentrated" captures all forms of concentration. It is very difficult to define "concentrate". Product manufacturers can achieve concentration by increasing the concentration of active ingredients, enhancing those ingredients or selecting more effective active ingredients. I will supply additional language to define concentrated. | No additional language was provided for the Department to analyze. No changes were made based on the workshop comments. A basic "dictionary" definition has been incorporated into the regulations to assist program participants. | No change. | 17943 |
| W3-01-04 | Randy Pollack, for various manufacturers | Thank you for setting up these workshops; they've been very valuable to us as industry in being able to go back and sort of help you and you help us understand exactly the direction the development of the regulations is progressing. We're happy we were able to provide some additional information. | Comment noted. Commenter supports workshops. | No change. | General |

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| W3-01-05 | Randy Pollack, for various manufacturers | Reusable Packaging - in the past the Integrated Waste Management Board determined it was a reusable item if you have a case with an item in it, such as a power drill. Now the definition in the revised regulations appears to be saying it has to be replaced or refilled by a similar item. | See L-07-02. | No change. | 17943 (s) |
| W3-01-06 | Randy Pollack, for various manufacturers | We believe the proposed edits to the definition of Reusable Rigid Plastic Packaging Container should not be made. A container that is reused by a consumer at least 5 times, and stores the original product contained by the package is reuse. | See L-07-02. | No change. | 17943 (s) |
| W3-01-07 | Randy Pollack, for various manufacturers | To respond to Mr. O'Grady's concern, my example is that the Reusable Rigid Plastic Packaging Container would hold the same product, for example a power tool going back into the same package. | See L-07-02. | No change. | 17943 (s) |
| W3-01-08 | Randy Pollack, for various manufacturers | Within the definition of Source Reduced Container (first 45-day comment period version Sections 17943 (w)(1) and 17943 (w)(1)(A)) There is a regulatory change focusing on a product packaging. If you have a container that you may be using for dishwashing, and you come out with a new line of detergent, that seems from the change proposed that you would not be able to use that container for source reduction, if that container had been previously used in another line and source reduced. It seems that the change here is that you would not be able to take advantage of that source reduction when you come out with a new line - same container but a new line of product. We think the focus should be on the container and not the product itself. | See W3-02-03. It depends how a company is attempting to certify compliance. The focus of the regulation is on product because the statutes provide authority to the department to regulate product manufacturers and not containers or container manufacturers. This is consistent with PRC 42301 (e). | No change. | 17943 (w) |
| W3-01-09 | Randy Pollack, for various manufacturers | If the regulations go into effect beginning Jan. 1, 2012, there would be some gathering of information in 2013 about who is going to a part of the program, in 2014, there would be a notice sent out saying you would be required to supply information certification, and in 2015, the Department would received a notice saying "Please show us and demonstrate your compliance for 2014." Is this a correct projection for implementation of the RPPC program once the regulations are adopted? | See L-05-07. | No change. | General Process |
| W3-02-01 | Pansy Leo, Ropak Packaging | I would like to submit for the record a copy of ExxonMobil's White Paper with technical input on the effects of adding 25% PCR, low molded fractional melted resin to injection grad HDPE. | See W2-01-07. | No change. | 17944 (a)(1) |
| W3-02-02 | Pansy Leo, Ropak Packaging | I would like to submit for the record a copy of our LCI study we did comparing a 5 gallon heavy duty HDPE pail compared to our source reduced pail made out of polypropylene, and its effect on reducing greenhouse gas emissions, as well as reducing non-renewable energy Provided Environmental Impacts of 5 gallon Pail Systems (Dr. Brian Coleman, Simply Sustain, September 2009/ | See W2-07-04. | No change. | 17943 (w) |

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| W3-02-03 | Pansy Leo, Ropak Packaging | Could you please clarify how the term container line will be defined? If we have a dish soap product using a half gallon container made out of HDPE and the same product is in another container made out of polypropylene, are those two considered the same container line? | A container line is defined as "holding the same product and manufactured with identical plastic resin(s), layers, style, shape, volume and weight" so same-size containers of different resin types would be different container lines, as would same-resin containers holding different products. | Added definition of container line (adopted revised regulations Section 17943(c)). | 17943 (new def.) |
| W3-02-04 | Pansy Leo, Ropak Packaging | Now that this series of workshops have been completed, what are the next steps before the regulations will be adopted and implemented? | A second 45-day comment period will be held. Then we are expecting to have a 15-day comment period. The whole package will be scheduled as a public hearing that the Department Director will conduct. The Director will make a decision to either go forward with staff's proposal, or direct staff to make changes. Finally the package is forwarded to OAL. All of this needs to be completed by February, 2012. The actual effective date will be included in the rulemaking package and direction provided by the Director when adopting the revised regulations. The Department proposes the regulations become effective on January 1, 2013. | No change. | General Process |
| W3-03-01 | Sue Vang, Californians Against Waste | Please note that CAW is providing the Department with information that supports our position related to available PCR material and other issues we have raised throughout this workshop series. Provided Biannual Report of Beverage Container Sales, Returns, Redemption and Recycling Rates (CalRecycle, May 2011) and Municipal Solid Waste in the United States, 2009 Facts and Figures (U.S. EPA, December 2010). | See L-14-01. The Department reviewed the national data, but chose to rely on a different set of data in preparing the updated EFIS to develop California costs. | No change. | General |
| W3-04-01 | Steve Alexander, Assn. of Postconsumer Plastic Recyclers | Information will be provided regarding LCI impact on greenhouse gas emissions by EPA and the Franklin Institute. Plastic recyclers will be providing input on the economic analysis by the end of next week. We will continue to provide input regarding the impact of Resin Switching on the plastic recycling industry. Provided Revised Final Report: Life Cycle Inventory of 100% Postconsumer HDPE and PET Recycled Resin from Postconsumer Containers and Packaging. | Based on the Department's re-evaluation of statute regarding the definition of material type and sourced reduced container (described above), the Department found that statutory requirements that pre-date the RPPC Act of 1991 were not considered in the development of Integrated Waste Management Board's 1994 RPPC regulations and ultimately concluded that resin switching was not permissible based on the statutory requirements. Therefore, the Department could not consider alternatives which permitted resin switching. The Department did use this data in preparing the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, greenhouse gas emissions related to resin switching to comply with source reduction requirements section, page (??) See also . Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, updated Economic and Fiscal Impact Study section, page (??). Regarding greenhouse gasses see L-05-11. Regarding Resin Switching see L-03-01. | No change. | 17943 (w) |

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| W3-05-01 | Tim Shestek, American Chemistry Council | Will CalRecycle staff be providing data and/or evidence to support its recommendation to eliminate the current resin switching that has been part of the RPPC Regulations since its inception? | See L-05-08. Further discussion is provided in the Final Statement of Reasons (FSOR) Reasonable Alternatives to the Proposed Regulatory Action, material type and resin switching as a source reduction compliance option section, page 4. | No change. | 17943 (f) and (w) |
| W3-06-01 | Catherine Goodall | Is the concept of Container Line only valid within a particular Product Line or across Product Lines? For example, a company could use a common Container Line across multiple products like dishwashing detergent, hand soap and other cleaners. | See W3-02-03 | Added definition of container line, product line, and product sub-line (adopted revised regulations Section 17943(c),(s) and(u)) | 17943 (new def.) |
| W3-07-01 | Bill O'Grady, Talco Plastics | I would like to clarify what Randy Pollack stated about the definition of Reusable Rigid Plastic Packaging Container, would the container be a reusable container if it contains something other than the original product? | See L-07-02. | No change. | 17943 (s) |
| W3-07-02 | Bill O'Grady, Talco Plastics | Could you give me a timeline for what will occur once the rulemaking package is forwarded to OAL for approval? | OAL has 30 business days to review the rulemaking package and determine whether to approve it. Once OAL has approved the regulations they are filed with the Secretary of State for final review and publishing. The Department proposes that the regulations become effective on January 1, 2013. | No change. | General Process |
| W3-08-01 | Laurie Hansen, Houston Group | Could you please clarify what is meant by the comment staff made regarding when the timeframe in which the rulemaking must be completed. It has been said that this effort needs to be completed by February, 2012. Is that because you started in February 2011. If that date is not met, will you have to start all over? | Pursuant to the OAL rulemaking requirements, once formal development of regulations have begun an agency is to complete the process within 12-months. The RPPC rulemaking began in February 2011 and must conclude by February 2012. If we do not complete the process within the 12-month the Department would have to start over. | No change. | General Process |