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

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

~~(a) Both the question and answer in each section have regulatory effect for purposes of implementation and enforcement. In addition to the regulations in this article, statutory provisions contained in §§ 42300 through 42345 of the Public Resources Code govern the Rigid Plastic Packaging Container Program.~~

~~(b) The requirements of these regulations go into effect for all rigid plastic packaging containers except those identified in Section 17944.2 on January 1, 1995, and for all calendar years thereafter, if at least 60 percent of the single family homes in the state are served by curbside collection programs that include beverage container recycling by January 1, 1994.~~

~~Note: Authority cited: Sections 40502 and 42325, Public Resources Code.~~
~~Reference: Section 42300 et seq., Public Resources Code.~~

~~§~~Section 17943. ~~Purpose and~~ Definitions.

~~(a) What is the purpose of these regulations?~~

~~These regulations provide guidance to those who must comply with the Rigid Plastic Packaging Container Program requirements, and include a description of the procedures that product manufacturers, container manufacturers, resin manufacturers, distributors, and importers must follow to meet reporting, certification, and documentation requirements. These regulations pertain only to rigid plastic packaging containers sold or offered for sale in California, regardless of where the containers or the products they hold are produced.~~

~~(b) Definitions.~~

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

~~(1) The "Board" means the California Integrated Waste Management Board.~~

~~(2) "Capable of Multiple Re-closure" means a rigid plastic packaging container that can be closed and re-closed with its attached or unattached relatively inflexible lid.~~

~~(3) "Cosmetic" means those articles pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321 (i)), and pertinent regulations in effect as of January 1, 1994, which~~

~~are 1) intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and 2) articles intended for use as a component of any such articles; except that such term shall not include soap as defined in 21 C.F.R. 701.20(a)(1) and (2). Products intended for cleansing the human body and which are not "soap" as defined in 21 C.F.R. 701.20(a)(1) are classified as "cosmetics."~~
(a) “Calendar Year” means a year beginning January 1 and ending December 31.

(b) “Concentrated Product” means a product which has been intensified, or made denser or stronger, to achieve more uses per unit.

(c) “Container Line” means a group of rigid plastic packaging containers manufactured with identical plastic resin(s), layers, style, shape, volume and weight.

(~~4~~d) "Container Manufacturer" means ~~the manufacturer of~~ a company or a successor company that manufactures and sells any rigid plastic packaging container ~~as defined in Section 17943(b)(30) of~~ subject to this Article to a product manufacturer that sells or offers for sale in California any product held in that container.

(~~5~~e) "Curbside Collection Program" means a recycling program that collects materials set out by ~~homeowners~~ households for collection at the curb at intervals not less than every two weeks. "Curbside collection program" does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

(f) "Department" means the California Department of Resources Recycling and Recovery.
~~(6) "Drugs" mean those articles as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) and pertinent regulations, which are as follows:~~
~~articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopeoeia of the United States, or official National Formulary, or any supplement to any of them; and articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and articles (other than food) intended to affect the structure or any function of the body of man or other animals; and articles intended for use as a component of any article specified in the clauses.~~

~~Drugs include prescription, nonprescription, and over-the-counter drugs regulated pursuant to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321).~~

(g) “Director” means the Director of the Department of Resources Recycling and Recovery.

(~~7~~h) "Final End User" means the ~~person who purchases a rigid plastic packaging container in order to use the product held by the container. The final end user is that~~ person or entity that ~~who~~ removes the product from the rigid plastic packaging container and discards or recycles the rigid plastic packaging container. ~~"Person," includes an~~

~~individual, firm, organization, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.~~

~~(8) "Food" means those articles as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)) and pertinent regulations, which are used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.~~

~~(9) "Infant Formula" as defined in the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)) and pertinent regulations, means food which a manufacturer claims is to be used solely as food for infants, because it simulates human milk or is suitable as a substitute for human milk.~~

~~(10) "Introduced" means any rigid plastic packaging container or product packaged in rigid plastic packaging containers that are first offered for sale and sold in California after January 1, 1995. Products for which such claims as "new" or "improved" are made and products for which the packaging has been changed by such criteria as size, color, or labeling, are not "introduced" packages or products.~~

~~(11) "Label" as used in the definition of product manufacturer, means a display of written, printed or graphic material upon the immediate container of any product.~~

~~(12) "Manufacturer" or "Product Manufacturer" means the producer or generator of a product which is sold or offered for sale in the state and which is stored inside of a rigid plastic packaging container. For the purposes of section 17948(a) and 17949(c) and (d) of this Article, "manufacturer" includes all subsidiaries and affiliates.~~

~~(A) Identification of the Product Manufacturer, for the purposes of this program, shall be determined by the following hierarchy:~~

~~1. When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity shall be considered the product manufacturer.~~

~~2. When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor shall be considered the product manufacturer.~~

~~3. When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer shall be considered the product manufacturer.~~

~~(B) "Stored" means that the container normally holds the product for more than seven days. For purposes of these regulations, point-of-sale products are not "stored" in a container for more than seven days.~~

~~(C) Any entity whose name may not appear on a label but which has a corporate relationship (i.e., parent/subsidiary or affiliate relationship) with an identified product manufacturer shall be allowed to assume the responsibilities of the product manufacturer as they relate to the requirements of Section 17944. The product manufacturer may be located inside or outside California, and/or inside or outside the United States.~~

(~~14~~i) "Material Type" for purposes of this Article means ~~broad~~ feedstock categories, such as, but not limited to, paper, glass, ~~plastic or~~ aluminum and individual plastic resins. ~~"Material type" does not mean individual plastic resins.~~

(~~13~~j) "May" means a provision is permissive.

(~~15~~k) "Measurement Period" means the ~~time period~~ calendar year for which compliance is being determined as part of the certification or auditing process described in ~~§~~Sections ~~17946,~~17945.1, 17945.2, 17945.3, ~~17946.5, and~~ 17947, and 17948.1 of this Article~~. (A) Unless the reuse or refill compliance options, pursuant to Section 17944, are used, "measurement period" shall be the preceding calendar year. If the reuse or refill compliance option is being used, the product manufacturer may establish another measurement period that is appropriate to the product life cycle. If the product manufacturer establishes a measurement period other than the calendar year, the Board may request documentation to substantiate the basis for the alternative measurement period. (B)~~ For products introduced for sale in California ~~on any day other than~~after January 1 of ~~any year~~ a measurement period, their first measurement period ~~for the first year in which the product's containers are required to comply with the program requirements~~ shall be the remainder~~ing partial~~ of that calendar year~~in which the product was introduced for sale in addition to the following calendar year. For all subsequent years, the measurement period shall be the calendar year, unless either the reuse or refill compliance option is used, in which case the manufacturer may establish a measurement period unique to its product, as described above~~.

~~(16) "Medical Device" means the same as it is defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, and includes the following:~~

~~(A) any instrument, apparatus, implement, machine, contrivance or implant which is recognized in the National Formulary or United States Pharmacopoeia or any additional supplement thereof,~~

~~(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or animal, or~~

~~(C) intended to affect the structure or any function of the body of man or animal.~~

~~A medical device does not achieve any of its principle intended purposes through chemical action, nor is it dependent upon being metabolized to achieve its intended purpose.~~

~~(17) "Medical Food" means the same as it is defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, which includes the following:~~

~~(A) foods formulated to be consumed or administered under the supervision of a physician, and~~

~~(B) foods intended for specific dietary management of disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.~~

~~For the purposes of these regulations, medical food is food that is consumed or directly placed in the stomach or intestines through a tube, or other food which is used to manage a disease or a medical condition, or food labelled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet". For the purposes of these regulations, medical food is not food for which popular dietary claims are made such as "low-fat" or "low-sodium."~~

(~~18~~l) "Must" or “Shall” means a provision is mandatory.

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

(~~19~~n) "Non-Source Reduced Container" means a rigid plastic packaging container that is not considered source-reduced under the criteria established for this program as found in Sections 17943 (~~31~~af) and ~~17946.5 (a)(2) and (b)(4)~~17945.3 (d)(2) – (5) of this Article.

(~~20~~o) "Original Rigid Plastic Packaging Container" means a rigid plastic packaging container that is holding a product when initially sold to the final end user and which may later be reused or refilled, as ~~used~~stated in ~~§ 17946.5(b)(2)~~ Sections 17945.3 (d)(6) and (d)(7) ~~(b)(3)~~of this Article.

(~~21~~p) "Particular Type Rigid Plastic Packaging Container" means ~~is~~ a rigid plastic packaging container which holds a single type of generic product, such as ~~milk~~all purpose cleaner or detergent.

~~(22) "Point-of-Sale Containers" are containers in which products are placed for sale directly to and intended for immediate consumption by the final end-user.~~

(~~23~~q) "Postconsumer Material (PCM)" means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product life cycle. ~~Postconsumer material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.~~

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

~~Internally generated scrap that has been commonly disposed may be considered postconsumer material if it is later used in a process other than the original manufacturing and fabrication process.~~

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

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

(~~24~~r) "Product Associated Rigid Plastic Packaging Container" means a brand-specific rigid plastic packaging container ~~line which~~ that may have one or more sizes, shapes or designs and ~~which~~ that is used in conjunction with a particular generic product line. A product associated rigid plastic packaging container holds a brand-specific product such as Brand "X" ~~salad dressing~~liquid hand soap or Brand "Y" automotive oil.

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

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

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

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

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

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

(2) Any entity that has a legally recognized corporate relationship (i.e., parent/subsidiary or affiliate relationship) with a product manufacturer shall be allowed

to assume the responsibilities of the product manufacturer as they relate to the requirements of this Article.

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

(~~25~~v) "Recycled" means a product or material ~~which~~ that has been diverted from disposal ~~in a landfill~~ and has been reused in the production of another product.

(~~26~~w) "Recycling Rate" means the proportion (as measured by weight, volume or number) of one of the following types of containers sold or offered for sale in California and being recycled in a given calendar year:

(~~A~~1) ~~The proportion, as measured by weight, volume, or number, that a p~~Particular type ~~of~~ rigid plastic packaging containers ~~sold or offered for sale in the state, such as a milk jug, soft drink container, or detergent bottle, is being recycled in a given calendar year~~.

~~This recycling rate calculation includes all rigid plastic packaging containers sold or offered for sale in California that are used to package the generic product for which the particular type recycling rate is calculated.~~

(~~B~~2) ~~The proportion, as measured by weight, volume, or number, that a p~~Product-associated rigid plastic packaging containers ~~sold or offered for sale in the state, is being recycled in a given calendar year~~.

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

(~~27~~x) "Refillable Rigid Plastic Packaging Container ~~package~~" means a rigid plastic packaging container ~~which the Board determines~~ that is routinely returned to and refilled by the product manufacturer or its agent at least five times to replenish the contents of ~~with~~ the original rigid plastic packaging container ~~product held by the package. For the purpose of this program, the product manufacturer or the product manufacturer's agent may refill a package~~.

(~~28~~y) "Replacement ~~p~~Product" means a product that is sold by a product manufacturer with the intent ~~that it be removed from its package in order~~ to replenish the contents of the original rigid plastic packaging container ~~that a consumer purchased that previously held the identical~~ sold by that same product manufacturer.

(~~29~~z) "Reusable Rigid Plastic Packaging Container ~~package~~" means a rigid plastic packaging container ~~which the Board determines~~ that is routinely reused ~~by consumers~~ at least five times where the reuse is to ~~store the original~~ hold a replacement product ~~contained by the package~~. A reusable rigid plastic packaging container does not refer to a

container that is intended to be used or may be used to permanently hold the original product sold in that container.

(~~30~~aa) "Rigid Plastic Packaging Container (RPPC)" means any plastic packag~~e~~ing container having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in ~~the state~~California.

(~~A~~1) Rigid plastic packaging containers are capable of at least one closure (including but not limited to closure occurring during the production or manufacturing process)~~multiple re-closure~~, are sold holding a product, and are composed entirely of plastic except that rigid plastic packaging containers may have: ~~with the exception of caps, lids, labels and other additives such as pigments, colorants, fillers, and stabilizers that are an integral part of the plastic polymer compound. Plastic caps and lids may be considered to be part of a rigid plastic packaging container at the product manufacturer's discretion.~~

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

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

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

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

(A) It has essentially the same shape empty as full. A plastic packaging container may be considered to have the same shape empty as full even if it is designed to be folded or collapsed into a more compact form when not holding a product, such as, but not limited to, collapsible acetate boxes or tubes; and

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

(~~B~~4) The ~~total volume of the closed~~ capacity of a rigid plastic packaging container ~~will establish if the container is within the eight ounce to five gallon size requirements.~~shall be determined as follows:

(A) For those containers measured in liquid or fluid volume, such as fluid ounce, gallon, milliliter, or liter, the product manufacturer may use either the labeled fluid volume or the ~~volumetric~~equivalent volume. The metric equivalent for the following U.S. liquid measures is as follows: eight (8) fluid ounces is equivalent to 236.5882365~~9006~~ milliliters, and five (5) gallons is equivalent to 18.92705892 liters.

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

~~(C) "Flexible container" is a container that can be flexed, folded, and twisted, without the aid of tools, without damaging the container.~~

~~(D) "Rigid container" is a container which is not a flexible container and has essentially the same shape empty as full.~~

~~(E) If it is unclear whether a container is a rigid plastic packaging container, the Board will make that determination on a case by case basis. The Board will make that determination by considering, at a minimum, how the container compares to others that are clearly regulated or excluded by the program.~~

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

(1) An original handwritten signature; or

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

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

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

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

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

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

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

(~~31~~af) "Source R~~r~~educed C~~c~~ontainer" means~~ either of the following~~:

~~(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.~~

~~1. If the product held by the container was sold prior to January 1, 1990, the non-source reduced container weight is the average weight of the container during the first 60 days commencing with the first day of sale in multiple jurisdictions in 1990.~~

~~2. If the product held by the container was initially sold on or after January 1, 1990, the non-source reduced weight is the average weight of the container during the first 60 days it was introduced for sale in multiple jurisdictions.~~

~~(B)~~(1) A rigid plastic packaging container ~~for which the manufacturer seeks compliance after January 1, 1995,~~ whose ~~package~~ container weight per unit or per number of product uses ~~of product~~ has been reduced by 10 percent when compared with one of the following:

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

(~~2.~~B) The rigid plastic packaging container used for ~~that~~ the product by the product manufacturer over the course of the product's first full year of commerce in ~~this state~~California.

(~~3.~~C) The rigid plastic packaging container used in commerce during the ~~that~~ same year for similar products in similar rigid plastic packaging containers by the product manufacturer or other product manufacturers that are held by "particular type rigid plastic packaging containers," as defined in this Article, whose containers have not been considered source reduced. ~~"Similar products" are the same products held by "particular type rigid plastic packaging containers", as defined in (21) of this section. The product manufacturer may demonstrate a comparison to "similar products" made by the same product manufacturer or made by another manufacturer.~~

(~~C~~2) A rigid plastic packaging container is not a source reduced container for the purposes of this ~~chapter~~ Article if the ~~packaging~~ reduction was achieved by any of the following:

(~~1.~~A) Substituting a different material type for a material ~~which~~ that previously constituted the principle material of the container.

(~~2.~~B) Increasing a container's weight per unit or per number of product uses ~~of product~~ after January 1, 1991.

(~~3.~~C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material. The Department ~~Board~~ may review any information provided by the product manufacturer, as well as other available information, to determine if the packaging change adversely affects the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

~~(D) For the purposes of calculating source reduction, the stated weight of a non-source reduced container used for comparison purposes must be be weight of the actual non-source reduced container used for twelve consecutive months. If the non-source reduced container has not been used for twelve consecutive months, the product manufacturer must provide information to the Board to support its claim if the Board requests supporting documentation as described in Section 17946.5. In addition, the stated weight of the source reduced container must be no greater than the weight of the actual container used for the duration that the source reduction compliance option is used.~~

~~1. If the source reduction of the container was achieved by manufacturing the container with a different resin than was used for the non-source reduced container, the new container is considered source reduced for the purpose of this program.~~

~~2.~~(3) Any source reduction achieved by changing the rigid plastic packaging container to a non-rigid ~~flexible~~ plastic container may be credited to other containers as part of the averaging method of compliance described in Section 17944(b).~~, Container Requirements.~~

~~3.~~(4) If a rigid plastic packaging container for a specific product is entirely eliminated and ~~the same~~ that product is sold in California without any packaging, the source reduction may be credited to other regulated containers used by the product manufacturer as part of the averaging method of compliance described in Section 17944(b)~~ Container Requirements~~.

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

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

~~§~~Section 17944. Container Requirements.

(a) ~~I am a product manufacturer responsible for ensuring that rigid plastic packaging containers comply with program requirements. What standards must these containers meet?~~On or after January 1, 1995, all rigid plastic packaging containers, except a rigid

plastic packaging container that is exempt under Section 17946.5 of this Article, sold or offered for sale in ~~the state~~California must meet one of the following criteria:

(1) Be made from at least 25 percent postconsumer material and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration. If it is technologically infeasible for a rigid plastic packaging container to meet this requirement, such a container must comply with another compliance option within this section.

(2) Be recycled at a 45 percent recycling rate if a product-associated rigid plastic packaging container, particular-type rigid plastic packaging container, or a single resin type rigid plastic packaging container.~~one of the following rates:~~

~~(A) All product-associated rigid plastic packaging containers must have a 45 percent recycling rate, or~~

~~(B) All particular-type rigid plastic packaging containers must have a 45 percent recycling rate.~~

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

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

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

~~For purposes of this section, rigid plastic packaging containers that are "sold or offered for sale" in the state refers to rigid plastic packaging containers that are manufactured on or after January 1, 1995, and subsequently sold or offered for sale in California.~~

(b) ~~Must every rigid plastic packaging container, that is not the subject of waiver pursuant to Section 17944.2(a) or exempt pursuant to Section 17944.5(a) of this Article, meet one of the compliance options listed in subdivision (a) of this section? No, every rigid plastic packaging container must not individually meet one of the compliance standards.~~ A product manufacturer may achieve compliance ~~for its containers~~ based on ~~an~~ averageing. ~~This average shall only be allowed for rigid plastic packaging containers for which the same compliance option is used.~~ Averagesing may be calculated using either data specific to rigid plastic packaging containers sold and/or recycled in California or data on rigid plastic packaging containers sold and/or recycled nationwide. Averages shall be calculated for postconsumer material using the formula in Section 17945.5(b)(2), for source reduction using the formulas in Section 17945.5(d)(4), for reuse using the

formula in Section 17945.5(e)(2), and for refill using the formula in Section 17945.5(f)(2). ~~Manufacturers may average the source reduction, postconsumer material, refill, or reuse options to express compliance for the containers they use. Averaging~~ Averages may be based on the product manufacturer's entire product line or ~~any~~ separated into product sub-lines ~~determined by the manufacturer~~. If ~~averaging is~~ averages are used to achieve compliance, ~~every~~ all rigid plastic packaging containers must be ~~included~~ accounted for in the calculation or must comply through ~~in an average or comply through~~ another compliance option ~~alternative~~.

~~Note:~~ Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42301, 42310, 42310.3, 42326, 42330 and 42340, Public Resources Code.

Section 17944.1. Alternative Container Compliance Method.

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

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

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

Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Section 42310.3, Public Resources Code.

~~§~~Section17944.2. How Will Waivers Be Granted?

~~(a) Which rigid plastic packaging containers are eligible for waivers from this program?~~

~~Waivers are allowed under the following conditions:~~

~~(1) The postconsumer content compliance option is waived for rigid plastic packaging containers if they cannot meet the postconsumer material requirement of § 17944 of this Article and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration. Containers waived under this condition must comply under another compliance option.~~

~~(2) The postconsumer content compliance option of §17944 of this Article is waived for rigid plastic packaging containers if it is technologically infeasible to use 25 percent postconsumer content. Containers waived under this condition must comply under another compliance option.~~

~~(3) All requirements of § 17944 of this Article are waived for a product manufacturer if by January 1, 1995, 50 percent, by number, of the product manufacturer's rigid plastic packaging containers sold or offered for sale in California, contain at least 25 percent postconsumer material, and all the manufacturer's containers will be in compliance using any option listed in Section 17944 on or before January 1, 1996.~~

~~(4) All requirements of § 17944 of this Article are waived for an introduced product or package, pursuant to § 17943, for 12 months immediately after the date on which it is first sold or offered for sale in California.~~

~~(b) I am a product manufacturer. How do I receive a waiver?~~

~~(1) To receive a waiver for your rigid plastic packaging containers pursuant to Section 17944.2(a), you may only petition the Board as part of the compliance verification and auditing process described in Sections 17944.2 and 17947 of this Article. You must submit to the Board by certified mail a written request containing the information below, in order for the Board to consider granting a waiver:~~

~~the rigid plastic packaging container(s) for which the waiver is being requested, the basis for the waiver, and the name, mailing address, and telephone number of the person to whom the Board shall direct future communications relating to the petition.~~

~~Petitions to the Board for a waiver pursuant to Section 17944.2(a)(5) above must also include the following:~~
~~a signed affidavit stating that the product held by the container was introduced into commerce in California after January 1, 1995, and that the product conforms to the "introduced" definition. The affidavit must include the date on which the product was first sold or offered for sale in California. The product manufacturer must supply documentation to substantiate the date of entry to the California marketplace, such as evidence of a California-based media campaign.~~

~~(2) Pursuant to section (a)(3) of this section, the Board will grant a general waiver for all product manufacturers that use rigid plastic packaging containers if less than 60 percent of California's single family households have access to curbside collection programs which include beverage container recycling, as described in (a)(3) of this section. You may not petition the Board for this waiver. The Board will consult the Department of Conservation's, Division of Recycling biannually to obtain the information necessary to determine whether this waiver should go into effect. This information shall be made public at the meetings of the California Integrated Waste Management Board and/or the Local Assistance and Planning Committee meetings held in the months of January and July of each year.~~

~~(3) Product manufacturers who want a waiver pursuant to Section 17944.2(a)(4) above shall not petition the Board for a waiver. If the Board requests certification and documentation from a product manufacturer that wants to be granted this waiver, the product manufacturer may demonstrate at that time that 50 percent, by number, of its rigid plastic packaging containers sold or offered for sale in California contained at least 25 percent postconsumer material during the calendar year 1995, and all of the manufacturer's containers are in compliance using any option listed in Section 17944 of this Article on or before January 1, 1996.~~

~~(c) How will the Board inform a product manufacturer if its petition for a waiver has been accepted or rejected?~~

~~Upon receipt of a product manufacturer's petition for a waiver, the Board will review the petition and will convey its finding to the product manufacturer within 60 days. All Board responses shall be in the form of written correspondence directed to the product manufacturer's designated contact person.~~

~~Note: Authority cited: Sections 40502 and 42325, Public Resources Code. Reference: Sections 42310, 42310.1, 42326 and 42330, Public Resources Code.~~

§Section 17944.5. Exempt Rigid Plastic Packaging Containers.

~~(a) Which rigid plastic packaging containers are exempt from the requirements of this Article?~~

~~Pursuant to Public Resources Code § 42340, the following containers are exempt from the requirements of this Article:~~

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

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

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

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

~~(b) I am a product manufacturer. Must I petition the Board to verify that my rigid plastic packaging containers are exempt from the requirements of this Article?~~

~~No, you are not required to petition the Board to verify that your rigid plastic packaging containers are exempt. If requested by the Board to certify compliance pursuant to section 17946 of this article, you must submit to the Board by certified mail a written response containing the information below:~~

~~the rigid plastic packaging container(s) for which the exemption is being claimed, the basis for the exemption, and the name, mailing address, and telephone number of the person to whom the Board shall direct future communication relating to the exemption.~~

~~Note: Authority cited: Sections 40502 and 42325, Public Resources Code.~~
~~Reference: Sections 42310, 42326 and 42340, Public Resources Code.~~

§Section 17945. Who Must Comply With These Regulations?

~~(a) Who is responsible for ensuring that the containers regulated by this program are in compliance with the requirements of this Article?~~

~~(1) Product manufacturers, pursuant to Section 17943(b)(12) of this Article are responsible for compliance with the requirements of the rigid plastic packaging container program.~~

~~(2) Product manufacturers that are responsible only for products exempt under section 17944.5 are required to comply only with section 17944.5(b).~~

~~Note: Authority cited: Sections 40502 and 42325, Public Resources Code.~~
~~Reference: Sections 42301 and 42325, Public Resources Code.~~

Section 17945.1. Pre-Certification Process.

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

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

(1) The designated contact's name and title;

(2) Contact phone number(s), fax number(s) and e-mail address(es);

(3) Mailing address(es) and web address (if available); and

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

(b) Pre-Certification Notice.

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

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

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

(c) Selection of Companies to Certify Compliance.

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

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

(2) A random selection of product manufacturers that have not yet been selected to certify compliance with this Article;

(3) A random selection of product manufacturers that have previously been selected for certification and have been found to be in compliance with this Article.

(d) Certification Notice.

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

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

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

Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Section 42310.2, Public Resources Code.

§ ~~17946~~ Section 17945.2. Compliance Certifications. ~~Who Must Certify That Compliance With This Article Is Met?~~

(a) ~~Who must submit certifications?~~Product manufacturers, ~~pursuant to Section 17943(b)(12) of this Article, and only~~ upon written notification from the Department ~~Board as described in this section~~, are required to certify to the Department ~~Board~~ that all of the rigid plastic packaging containers ~~that they use~~ holding their products sold or offered for sale in California comply with the rigid plastic packaging container requirements, pursuant to Public Resources Code Section 42310 or 42310.3 ~~if they sell or offer for sale a product in a rigid plastic packaging container that is sold to a final end-user in California~~. Product manufacturers shall submit the information described in Section 17945.3 in their certifications.

~~Upon the Board's request, a product manufacturer must submit a Board-supplied product manufacturer certification containing information that includes, but is not limited to, the information described in section (i) below.~~

~~A product manufacturer must, in addition, submit a container manufacturer certification if the product manufacturer chooses compliance based on the postconsumer content or source reduction compliance options, pursuant to this section and Sections 17944 and 17946.5 of this Article.~~

(b) Container manufacturers' ~~must supply a~~ certifications provided to product manufacturers ~~that~~ shall include~~s~~ the information described in ~~s~~Section 17945.4. ~~(h) below, if the container manufacturer produces rigid plastic packaging containers that either~~

~~(1) Meet the postconsumer material compliance option, or~~

~~(2) Meet the source reduction compliance option where the source reduction was achieved by reducing the weight of the containers used for a specific amount (ounces, grams, etc.) of product.~~

~~Proprietary information included in a certification submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in section 17948.~~

~~(b) When must certifications be submitted?~~

~~The Board may request a completed certification from a product manufacturer once per calendar year or once per a product manufacturer's compliance measurement period, pursuant to Section 17943(b)(15) of this Article. The Board shall not initiate requests for certifications until January 1, 1996, and will not require a product manufacturer to submit evidence of its compliance until 90 days after the end of the calendar year or measurement period established pursuant to Section 17943(b)(15).~~

~~(c) Where can I get a certification form?~~

~~As part of the Board's notification to product manufacturers that they shall submit a compliance certification, the Board will include a product manufacturer certification form and a container manufacturer certification form. The Board will request that compliance certification be made by certified mail.~~

~~(d) How will the Board determine which product manufacturers are to submit a rigid plastic packaging container certification form and how will the Board notify product manufacturers of its determination?~~

~~In addition to random selection, the Board may use the following criteria to determine when to request a certification form from a product manufacturer: container type, product type held by the container, company size, or receipt of information that causes the Board to suspect that a container is not in compliance. The Board will request a certification of compliance from a product manufacturer in writing.~~

~~(e) How long do I have to respond to a Board request for a completed certification forms?~~

(c) A product manufacturer's completed certification, including any applicable container manufacturer certifications, ~~forms~~ must be postmarked or sent electronically no later than April 1 of the calendar year immediately following the measurement period ~~90 calendar days from the date on which the Board's request arrived via certified mail.~~

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

(~~f~~e) ~~As a product manufacturer, how will I know if my certification forms are complete? The Board will review the certification forms to determine (1) the completeness of the certification forms; and (2) if not complete, any additional information or documentation needed.~~ If ~~T~~the Department ~~Board~~ receives a certification that, upon review, does not include all of the information required by this Article, the Department will ~~then, via certified mail,~~ notify the product manufacturer ~~as to the completeness of the forms. The Board's notice will~~ and state what ~~whether any~~ additional information or documentation is required. The product manufacturer will then have 30 calendar days after ~~the~~ receipt of the notice to provide the required information or documentation. One 30-calendar day extension may be granted for cause by the Department upon request.

(f) At any time, the Department may request information from a product manufacturer outside of any notice of incomplete certification. In such cases, the Department shall mail a written request, and the product manufacturer shall have 60 calendar days following the date of receipt of the request to supply the information.
~~(g) If I am a product manufacturer and I wish to claim compliance through the source reduction or postconsumer content options, as described in Section 17944 of this Article, who must provide certification to the Board: I or the container manufacturer?~~

~~When the basis for compliance is either the postconsumer material option or the source reduction compliance option where the reduction was achieved by a simple decrease in container weight, then the container manufacturer must provide certification to the product manufacturer. If either of these two compliance options are claimed, you must request the appropriate container manufacturer(s) to complete a Board-supplied container manufacturer certification form. This form will be provided to you with the original request for certification from the Board or at your request. This form must be completed by the container manufacturer, and must accompany your product manufacturer certification form when sent to the Board. The required information to substantiate either of these two compliance claims is described in section (h) below.~~

~~Alternatively, if the container manufacturer provides you with all the information described in section (h) below as part of standard business procedures, then that same information may be submitted to the Board in lieu of a completed container manufacturer form supplied by the Board. As with the Board-supplied container manufacturer certification, the information supplied by the container manufacturer to you must be submitted with any product manufacturer certification that is submitted to the Board.~~

~~The product manufacturer is responsible for compliance with the requirements in Section 17944, but the container manufacturer is responsible for ensuring the accuracy of any information it provides to you.~~

~~(h) If I am a container manufacturer, what type of information must I provide in my certification?~~

~~You must provide, at a minimum, the following information:~~

~~(1) Your company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying required information;~~

~~(2) The name, address, and telephone number of the product manufacturer at whose behest you are completing the certification form and the name and title of the person at that company who requested that you complete a certification form. If you supply a standard form to all customers expressing compliance with either the postconsumer material or source reduction compliance options as described in (g) of this section and which includes the information required in this section, then you do not need to provide the information in the previous sentence;~~

~~(3) For compliance with the postconsumer material option, state the following: the percentage of postconsumer material in the containers in question, the total weight of resin used to manufacture the specified containers, and the total weight of postconsumer resin used to manufacture the specified containers.~~

~~(4) For compliance with the source reduction option that was achieved by a simple reduction in container weight, state the following: the percentage of weight reduction for the containers, and the average weight of the containers of the packaging line before and after source reduction occurred.~~

~~(5) Any other information the Board determines is necessary to verify compliance.~~

~~(6) The certification must be submitted under penalty of perjury, according to the following format:~~

~~"I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct."~~

~~(Date) (Signature)~~

Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42310, 42310.3, 42325, 42330, and 42340, Public Resources Code.

~~(i)~~**Section 17945.3. Product Manufacturer Certification Information.**

(a) ~~If I am a product manufacturer, what type of information must I provide in my certification? The information submitted on a Board-supplied product manufacturer certification form shall include, but not be limited to, the following:~~When notified by the Department to certify compliance, a product manufacturer shall include in its certification the information listed in subsections (b) through (d), and if applicable, (e), of this Section.

(b) General Product Manufacturer Information

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

(2) ~~The advertised name of your product containers regulated by this article and the resin type used for the containers;~~ A statement of product manufacturer compliance including whether the product manufacturer sold or offered for sale products held in rigid plastic packaging containers into California, and whether some or all of the products were approved for a waiver pursuant to Section 17946, and whether some or all of the containers qualified for an exemption pursuant to Section 17946.5.

~~(3) The compliance option, as described in Sections 17943 and 17944 of this Article, used to attain compliance or a statement that the product container is not in compliance with program requirements. The information you are required to provide depends on the compliance option used.~~

~~(A) For compliance with the postconsumer material option, state the percentage of postconsumer material in the containers for which you claim compliance.~~

~~(B) For compliance with any of the recycling rate options, state which recycling rate option was used, the recycling rate achieved, and a description of the products held by the containers that have achieved the stated rate.~~

~~(C) For compliance with the reuse option, state the average number of times the container was reused.~~

~~(D) For compliance with the reuse option, state the average number of times the container was refilled.~~

~~(E) For compliance with the source reduction option where the source reduction was achieved by either concentrating the product, or achieved by a combination of concentrating the product and reducing the weight of the container that holds the product, you must provide the following:~~

~~1. The percentage the container was source reduced, and~~

~~2. The average weight per unit of product or the average weight per use of product before the source reduction was made and the average weight per unit of product or the average weight per use of product after the source reduction was made.~~

~~(4) Any other information the Board determines is necessary to verify compliance.~~

(~~5~~3) If the product manufacturer is a corporation, ~~T~~the certification must be ~~submitted~~ signed under penalty of perjury~~, according to the following format:~~ by the president or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer, a general manager, or other such person authorized by the corporation to accept service of process. If the product manufacturer is a partnership or sole proprietorship, the certification must be signed by a general partner or the sole proprietor. The certification shall include the following statement, the title of the signatory and the date of signature.

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

_____ _____

~~(Date) (Signature)~~

(c) Container Information

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

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

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

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

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

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

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

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

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

(A) Direct sales by the product manufacturer;

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

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

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

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

(d) Product Manufacturer Certification Requirements for Each Compliance Option

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

(1) Postconsumer Material Content Compliance

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

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

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

(2) Source Reduction – Reduced Container Weight Compliance

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

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

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

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

(3) Source Reduction – Product Concentration Compliance

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

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

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

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

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

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

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

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

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

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

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

(5) Source Reduction – Comparison to Similar Products Compliance

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

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

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

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

(6) Reusable Rigid Plastic Packaging Container Compliance

This option will demonstrate compliance for the original rigid plastic packaging containers only. The replacement product, if packaged in a rigid plastic packaging container, must comply under another compliance option. For rigid plastic packaging containers where compliance is claimed pursuant to Section 17944(a)(3) through reuse of the container:

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

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

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

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

(7) Refillable Rigid Plastic Packaging Container Compliance

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

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

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

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

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

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

(A) Approval of Recycling Rate Methodology:

1. Within 90 calendar days of receipt of a Certification Notice pursuant to Section 17945.1(d), the product manufacturer shall submit a written request to the Department presenting its proposed particular type, product associated, or resin-specific recycling rate methodology. This methodology shall explain in detail how the figures will be derived and obtained.

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

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

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

(B) Compliance Data:

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

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

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

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

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

(9) Floral Industry Compliance

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

(A) Approval of Methodology:

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

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

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

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

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

3. Once a methodology has been approved by the Department, that methodology shall be used to determine the reuse submitted as part of a compliance certification. If the approved methodology is not used and the product manufacturer selects this compliance option, the Department may find the product manufacturer to be out of compliance. The methodology remains valid to determine compliance in future

years. Authorization for modifying a methodology shall be sought using the same method listed in Section 17945.3(d)(9)(A)(1).

(B) Compliance Data:

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

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

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

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

(e) Alternative Container Compliance Method Information

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

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

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

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

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

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

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

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

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

3. Date of receipt of the plastic.

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

a. The type of plastic resin.

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

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

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

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

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

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

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

~~Note:~~ Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42310, 42310.3, 42320, ~~42321, 42323~~ and 42325, Public Resources Code.

Section 17945.4. Container Manufacturer Certification Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The type of plastic resin.

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

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

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

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

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

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

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

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

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

~~§~~ Section 17945~~6~~.5. ~~Documentation Requirements~~Compliance Calculation and Formulas.

~~The Board may require product manufacturers and container manufacturers to submit to the Board supporting documentation that substantiates their compliance claims following the receipt of a certification. Except as otherwise stated, documentation to substantiate a compliance claim must be provided for the preceding calendar year.~~

~~Proprietary information included in a supporting documentation submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in subsection 17948(i).~~

(a) ~~I am a product manufacturer. What information must I provide to substantiate the certification claims made in response to Section 17946?~~

~~The information necessary to substantiate compliance varies depending upon the compliance option selected.~~ The product manufacturer shall use the following formulas to calculate its claim of compliance. The calculation shall be carried out to two decimal

places. Unless otherwise noted, all weights should be in grams and all calculations should be by container line.

(b) Postconsumer Material Content Compliance

~~(1)~~ For rigid plastic packaging containers for which compliance is claimed through the use of ~~the~~ postconsumer material (PCM) content pursuant to Section 17944(a)(1), use the following formulas ~~compliance option is claimed, the product manufacturer must provide, at a minimum, the following information~~:

~~(A) Certification from the container manufacturer stating the total weight of postconsumer resin in the containers for which compliance is claimed and the total weight of all resin used in the containers for which compliance is claimed. If later requested by the Board, the container manufacturer must provide copies of shipment orders, bills of lading, purchase orders, or other evidence of receipt of postconsumer resin during the previous calendar year for the manufacture of the containers for which compliance is claimed,~~

~~(B) The formula and data used to calculate the percentage of postconsumer material in the container. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:~~

(1) For a single ~~or multiple~~rigid plastic packaging container line~~s~~:

$$\cancel{\text{Percent of Postconsumer Material} = \left(\frac{\text{total weight of postconsumer resin used in all containers}}{\text{total weight of postconsumer resin used in all containers} + \text{total weight of all other resins used in all containers}} \right) \times 100}$$

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

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

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

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

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

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

~~(C) Any other information from the product manufacturer necessary to substantiate the product manufacturer's claim of compliance with this option.~~

(c) Alternative Container Compliance Method

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

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

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

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

(d) Source Reduction Compliance

~~(2)~~For rigid plastic packaging containers for which compliance is claimed through ~~the~~ source reduction pursuant to Section 17944(a)(4), use the following formulas~~compliance~~

~~option is claimed, the product manufacturer must provide, at a minimum, the following information~~:
~~(A) The percentage the container has been source reduced,~~

~~(B) The container weight per unit or use of product of the non-source reduced container and the container weight per unit or use of product for the container for which source reduction is claimed,~~

~~(C) The formula and data used to calculate the percentage that the containers were source reduced. The following formulas may be used, if mathematically appropriate for the subject containers, or the container manufacturer may supply its own appropriate formula:~~

(1) For~~mula to calculate the percentage of~~ a single rigid plastic packaging container ~~packaging~~ line where the container weight has been reduced:

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

$$\cancel{\text{Percent Source Reduced} = \frac{\left(\frac{W_n}{U_n}\right) - \left(\frac{W_s}{U_s}\right)}{\left(\frac{W_n}{U_n}\right)} \times 100}$$

~~Formula to calculate the percentage of source reduction for multiple packaging lines:~~

$$\cancel{\text{Percent Source Reduced} = \frac{\sum_i N_i \left(\frac{W_{n_i}}{U_{n_i}} - \frac{W_{s_i}}{U_{s_i}}\right)}{\sum_i N_i \left(\frac{W_{n_i}}{U_{n_i}}\right)} \times 100}$$

where: $W\cancel{n}_N$ = the ~~average~~ weight ~~or volume capacity~~ of the non-source reduced rigid plastic packaging container~~s~~
~~Un = units or uses of product per non-source reduced container~~
Ws = the ~~average~~ weight ~~or volume capacity~~ of the source reduced rigid plastic packaging container~~s~~
~~U_S = units or uses of product per source reduced container~~
~~i = each container line complying with this source reduction option~~
~~N_i = total annual number of containers in container line i complying with the source reduction option~~

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

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

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

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

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

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

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

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

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

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

~~(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's claim of compliance with this option.~~

(e) Reusable Rigid Plastic Packaging Container Compliance

~~(3)~~ For rigid plastic packaging containers for which ~~the reuse~~ compliance ~~option~~ is claimed through reuse of the containers pursuant to Section 17944(a)(3), use the following formulas for the given measurement period~~, the product manufacturer must provide, at a minimum, the following information~~:

~~(A) A statement of the measurement period that was used to quantify the amount that the identified containers were reused, and a quantitative description of how that measurement period was determined;~~

~~(B) Copies of sales reports or other evidence that show the following:~~

~~1. The total volume or weight of the product sold in the original containers in the established measurement period, and~~

~~2. The total volume or weight of the replacement product sold.~~

~~Sales reports of the product sold in the original rigid plastic packaging container and sales reports of the replacement product must be identified separately; and~~

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

~~(C) The formula and data used to calculate the number of reuses achieved for the containers. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:~~

(1) For~~mula to calculate the number of reuses for a given measurement period for~~ a single rigid plastic packaging container line:

~~Average Reuse Per Container Liner = (number of replacement product packages sold) x n / (number of original containers sold)~~

$$\text{Average Reuse Per Rigid Plastic Packaging Container} = \left(\frac{R \times V_R}{P \times V_P} \right)$$

where: R = the number of replacement product packages sold during the period
P = the number of original rigid plastic packaging containers sold during the period
V_R = the volume of the replacement product package
V_P = the volume of the original rigid plastic packaging container
~~n = the number of times the replacement product packages will fill the original container to accomplish the same number of units or uses of product held by the original container.~~

(2) For~~mula to calculate the average number of reuses for a given measurement period for~~ averaging multiple rigid plastic packaging container lines:

$$\text{Average Reuse Per Rigid Plastic Packaging Container} = \frac{\Sigma (R \times V_R)_n}{\Sigma (P \times V_P)_n}$$

where: R = the number of replacement product packages sold during the period
P = the number of original rigid plastic packaging containers sold during the period
V_R = the volume of the replacement product package
V_P = the volume of the original rigid plastic packaging container
n = the number of container lines being averaged
~~i = each container line seeking this compliance option~~
~~R = total number of units or uses sold in replacement products packages calculated by multiplying the number of units or uses in each replacement package by the number of replacement packages sold during the measurement period.~~
~~Oi = total number of units or uses sold in original containers calculated by multiplying the number of units or uses in each original container by the number of original containers sold during the measurement period.~~

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

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

~~(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.~~

~~NOTE: This option will demonstrate compliance for the original containers only; the replacement product container must comply under another option.~~

(f) Refillable Rigid Plastic Packaging Container Compliance

~~(4)~~ For rigid plastic packaging containers for which ~~the refill~~ compliance ~~option~~ is claimed through the refilling of the container by the product manufacturer pursuant to Section 17944(a)(3), use the following formulas for the given measurement period~~, the product manufacturer must provide, at a minimum the following information~~:

~~(A) A statement of the measurement period that was used to quantify the amount that the identified containers were refilled, and a quantitative description of how that measurement period was determined;~~

~~(B) Copies of sales reports or other evidence which shows the following:~~

~~1. The total number of containers sold during the measurement period.~~

~~2. The total number of original containers used by the product manufacturer during the established measurement period.~~

~~(C) The formula and data used to calculate the number of refills achieved for the containers. The following formulas may be used, if mathematically appropriate for the subject containers, or the product manufacturer may supply its own appropriate formula:~~

(1) For~~mula to calculate the number of refills for a given measurement period for~~ a single rigid plastic packaging container line:

~~Average Refills Per Container = number of containers sold during the measurement period / number of new original containers used by the product manufacturer during the measurement period~~

$$\text{Average Refills Per Container} = \frac{F}{P}$$

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

(2) For~~mula to calculate the number of refills for a given measurement period for~~ averaging multiple rigid plastic packaging container lines:

~~Average Refills Per Container = total weight of all containers sold during the measurement period / total weight of all new original containers used during the measurement period~~

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

where: F = the number of refills of rigid plastic packaging containers made by the product manufacturer during the period
P = the number of original rigid plastic packaging containers sold during the measurement period
n = the number of container lines being averaged

(3) To comply ~~with~~ under this option, the Average Refills Per Container must be equal to or greater than ~~6~~5.00 refills.

~~(F) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.~~

~~(5) For rigid plastic containers for which the particular type or product associated recycling rate compliance option is claimed, the product manufacturer must show the recycling rate for that specific particular type of container sold in California and the number of those containers collected in California for recycling. At a minimum, the product manufacturer must do the following:~~

~~(A) Present to the Board in writing for its approval the methodology used to determine the sales and recycling figures. This methodology must explain in detail how the figures were derived or obtained. The Board must approve of the methodology prior to its use to determine a particular type or product associated recycling rate. Beginning for compliance year 1996, for any given calendar year, if a product manufacturer elects to base compliance on this option, the methodology must have been submitted to the Board by July 1 of the previous year. A product manufacturer may use the same methodology that the Board adopts to determine the aggregate recycling rate if the product manufacturer can demonstrate how the method is appropriate and comparable.~~

~~The Board shall notify the product manufacturer within 60 days of the postmark of the request as to whether the methodology is acceptable. If a methodology is determined to be unacceptable, the Board will provide the rationale for why the methodology is not acceptable and provide suggestions as to how the proposed methodology could be altered to be made acceptable.~~

~~(B) Once a methodology has been approved, that same methodology must be used to determine the figures submitted as part of a compliance claim. If the approved methodology is not used and the manufacturer selects this compliance option, the Board may reject the product manufacturer's compliance claim. The methodology remains valid to determine compliance in future years, unless it is modified by the product manufacturer without the Board's approval. Procedures for obtaining authorization for modifying a methodology are identical to those for establishing the initial methodology as stated in this section. The Board may request original data.~~

~~(C) Product manufacturers that use the particular type recycling rate to comply with this program may designate any person as the entity to design the methodology, perform the study, and submit supporting documentation to the Board on behalf of the product manufacturers who are using the particular type rigid plastic packaging containers.~~

~~(D) Any other information from the product manufacturer necessary to substantiate the product manufacturer's compliance claim with this option.~~

~~(E) To comply under this option, the recycling rate must be equal to or greater than 45 percent.~~

~~(6) Product manufacturers using the floral industry compliance option, as specified in section 17944(a)(5), shall submit to the Board for review and approval a methodology showing how affected containers will meet the two year reuse criteria. For 1997, the product manufacturer shall submit the proposed methodology to the Board on or before July 1, 1997. For subsequent years, the manufacturer shall submit the proposed methodology to the Board on or before July 1 of the calendar year immediately prior to the year the manufacturer intends to use this compliance option.~~

~~The methodology shall include:~~

~~(A) The proposed method used to determine the number of containers sold to the floral industry in California;~~

~~(B) The proposed method used to determine the total number of containers sold in California; and~~

~~(C) The proposed method used to determine the average reuse (in years) of the containers purchased by the floral industry in California. One acceptable method would be a statistically valid survey of the product manufacturer's floral industry customers, to~~

~~be conducted by an independent contractor. If this method is used, a copy of the proposed survey form must be included in any submittals to the Board.~~

~~(7) Based upon information received related to subdivisions (1) through (6) of this section, the Board may request additional information as it deems necessary.~~

~~(b) Can a product manufacturer switch the option it uses to attain compliance for its rigid plastic packaging containers?~~

~~A product manufacturer may change the option it uses to attain compliance for its rigid plastic packaging containers one time per calendar year or other established measurement period.~~

~~(c) When must I submit supporting documentation to the Board?~~

~~Following receipt of your compliance certification, the Board may request that you submit documentation to support your compliance claim. You must submit supporting documentation at the Board's request. If the Board wants you to submit supporting documentation, the Board will mail a request and you will have 60 days following the postmarked date to supply the information. Supporting documentation shall be submitted to the Board by certified mail. If the Board does not request supporting documentation, you should not include it with your compliance certification.~~

~~(d) How long must I keep the records required by these regulations?~~

~~For all compliance standards used by a product manufacturer other than source reduction, all documentation supporting any compliance claim must be available for at least four years following the end of the compliance period. For source reduction compliance claims, the supporting documentation for the baseline year as specified in subdivision (a)(2) of this section must be available to the Board for at least four years after the product is no longer sold in California.~~

~~Note:~~ Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42310, 42320, ~~42321~~ and 42325, Public Resources Code.

Section 17946. Waivers.

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

(b) Such waivers from compliance with Section 17944 shall be valid for 12 months from the date on which the newly introduced product is first sold or offered for sale in California.

(c) Petition for Waiver

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

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

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

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

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

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

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

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

Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42325 and 42330, Public Resources Code.

Section 17946.5. Exempt Rigid Plastic Packaging Containers.

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

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

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

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

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

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

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

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

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

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

Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42310, 42326 and 42340, Public Resources Code.

§ Section 17947. Auditing.

(a) Will the Board audit my certifications? The Board Department, or its agent, may audit your product manufacturer compliance certifications. The Board Department, or its agent, may ask you for supporting documentation as described in Sections 17946 5.2 and 17946.5 17945.3 of this Article.

(b) How will the Board request supporting documentation? To obtain the information documentation, the Board will mail Department or its agent shall send a written request to you. The Board recipient of a request for documentation will list the information it needs and explain why the Board needs the information. You willshall have 60 calendar days following the postmarked confirmed date of delivery of on the Board's request to supply the informationdocumentation.

(c) How will the Board conduct an audit?

If the Board decides to conduct an audit of your records to determine compliance with program requirements, the audit will be conducted based on information you provide to the Board. The Board may request supplemental information from you during the course of the audit, if necessary. The Board will mail you the results within 60 days of the date that the Board receives any supplemental information requested.

(dc) What if I fail to provide requested information to the Board? If you fFailure to provide the requested information in accordance with this Article, you may be subject to the fines result in violations and penalties as set forth in Section 17949 of this Article.

Note: Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42320 and 42321, Public Resources Code.

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

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

(1) Upon the request of a manufacturer or trade association, the Board shall not disclose information, required by Section 17948 as it read prior to January 1, 1997, related to individual manufacturers, to the extent that it may legally be withheld from disclosure. Information related to individual manufacturers may be withheld from disclosure:

~~(A) if it is found to contain proprietary information pursuant to Public Resources Code Section 42323;~~

~~(B) to the extent provided by Government Code Sections 6254(k) and 6255; and~~

~~(C) if it constitutes a trade secret as referenced in Public Resources Code Section 40062, Civil Code Section 3426 et seq., and Government Code Section 6254.7.~~

~~(2) If the Board receives a written request from a member of the public that the Board disclose data claimed to be trade secret, confidential or proprietary information, or if the Board, upon its own initiative, seeks to disclose such data, the Board shall inform the provider of the information in writing that disclosure of the data is sought, and that a determination is being made as to whether any or all of the information has been properly identified as trade secret, confidential or proprietary information.~~

~~(A) If the Board determines that the information is not trade secret, confidential or proprietary information, the Board shall notify the person who furnished the information by certified mail. The person who furnished the information shall have 30 days after receipt of this notice to provide the Board with a complete justification and statement of the grounds on which the trade secret, confidential or proprietary information claim is being made. The justification and statement shall be submitted to the Board by certified mail. The deadline for filing the justification may be extended by the Board upon a showing of good cause made prior to the deadline specified for its receipt.~~

~~1. The justification and statement submitted in support of a claim of trade secret, confidential or proprietary information shall include, but is not limited to, the following:~~

~~a. a specific description of the data claimed to be entitled to treatment as trade secret, confidential or proprietary information;~~

~~b. a statement as to whether it is asserted that the data is a trade secret, is confidential or proprietary information, that disclosure of the data would result in harmful effects on the person's competitive position, and if so, the nature and extent of such anticipated harmful effects;~~

~~c. any statutory or regulatory provisions under which the claim of trade secret, confidentiality or proprietary is asserted;~~

~~d. the period of time for which trade secret, confidential or proprietary treatment is requested;~~

~~e. the extent to which the data has been disclosed to others and whether its trade secret, confidential or proprietary status has been maintained or its release restricted;~~

~~f. trade secret, confidentiality or proprietary determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determination, if available.~~

~~2. Documentation in support of a claim of trade secret, confidential or proprietary information, as specified in subdivision 1. of this section, may be submitted to the Board prior to the time disclosure is sought.~~

~~(B) The Board shall determine whether the information is protected as trade secret, confidential or proprietary information within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the notice required by subdivision (A). The Board shall notify the person who furnished the information and any party who has requested the information pursuant to a public records request of the determination, by certified mail.~~

~~(C) If the Board determines that the information is not protected as trade secret, confidential or proprietary information, the notice required by subdivision (B) shall also specify a date, not sooner than 15 days after the date of mailing of the notice, when the information shall be made available to the public.~~

~~(3) Except as provided in subdivisions (1) and (2), the Board may release information submitted and designated as trade secret, confidential or proprietary information to the following under the following conditions:~~

~~(A) Other governmental agencies, and the Legislature may receive information that has been compiled or aggregated from confidential information, but does not reveal the specific sources of the information, when the information has been requested in connection with a local enforcement agency's or the Board's responsibilities under this division or for use in making reports.~~

~~(B) To the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the information.~~

~~(4) Should judicial review be sought of a determination issued in accordance with section (2), either the person requesting the data or the person making the claim of trade secret, confidential or proprietary information status in relation to the data, may be made a party to the litigation to justify the determination.~~

~~Note:~~ Authority cited: Section 6253, Government Code. Sections 40502 and 42325, Public Resources Code.
Reference: Sections 6250 et seq., Government Code. Sections 40062 and 42323, Public Resources Code.

Section 17948.1. Retention of Records.

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

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

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

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

Section 17948.2. Advisory Opinions.

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

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

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

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

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

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

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

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

§Section 17948.5. Letters of Non-Objection.

§Section 17949. Violations and Penalties.

(a) ~~What may result if I provide the Board with a false or misleading certification?~~ Pursuant to Public Resources Code Section 42321~~2~~, within 30 calendar days of the Department determining ~~Board having made a determination~~ that an entity provided the Department ~~Board~~ with a false or misleading ~~certificate~~ compliance certification, the Department may ~~Board shall~~ refer that entity to the Attorney General for prosecution for fraud.

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

(~~b~~c) ~~What may result if I do not comply with the program requirements?~~ Any violation of this Article is a public offense and is punishable by a fine not to exceed $100,000. In addition, violators may be subject to a civil penalty not to exceed $50,000 per violation. Total fines and penalties are not to exceed $100,000 per annum (i.e., calendar year certification cycle) for each violator. ~~Annually, on and after July 1, 1996,~~On or before July 1st of each year, the Department ~~Board~~ shall publish a list setting forth any fines or penalties that have been levied against a violator of this Article in the preceding calendar year for failure to comply with the requirements of this Article~~of all violators of these requirements and the amount of the fines they were assessed~~.

(~~c~~d) ~~What are the penalties for not complying with program requirements?~~Penalties for specified violations of program requirements are as follows.

Violation	Description of Violation	Penalty
(1) CCR	Product manufacturer did not	$5,000—$50,000 See

Section 17944; PRC Section 42310	comply with rigid plastic packaging container requirements in accordance with Sections 17945.3 and 17945.5 of this Article. Penalty determined by degree of noncompliance.	S~~ubs~~ection 17949(~~d~~e).
(2) CCR Section ~~17946~~ 17945.2	Product manufacturer did not submit certification by due date.	$1,000—$50,000 See S~~ubs~~ection 17949(~~e~~f).
(3) CCR Section ~~17946~~ 17945.2; 17945.3	Product manufacturer did not submit complete or accurate certification by due date. Degree of incompleteness or inaccuracies include, but are not limited to, misreporting exemptions~~;~~, failure to account for all products~~;~~, failure to account for subsidiaries and divisions~~;~~, lack of container manufacturer's verification of number of containers sold or weight of containers~~;~~, inconsistencies in information ~~from~~ between product manufacturer and container manufacturer~~;~~, lack of signatures~~;~~, mathematical inaccuracies.	$1,000—$50,000 See Section 17949(g).
(4) CCR Section ~~17946~~ 17945.2; 17945.3; 17945.4; PRC Section 42321	Product manufacturer or container manufacturer submitted false or misleading information on certification.	Referral to Attorney General for prosecution for fraud within 30 calendar days of discovery by the Department ~~Board~~; maximum fine, $100,000.

(~~d~~e) ~~For violation (1) how will the degree of noncompliance be determined?~~

When product manufacturers do not comply with the rigid plastic packaging container requirements in Sections 17945.3 and 17945.5 (i.e., Violation 1 in the preceding table), the Department will calculate penalties using the data from the approved compliance certifications and the following formulas. The process gives credit for progress in meeting compliance options by container line (or averaged container lines), and the total penalty is based on a weighted average calculation of the product manufacturer's overall compliance. ~~The degree of noncompliance will be determined according to the following point system where the amount of violation will be determined according to the following formula: $50,000 minus $1,800 times number of points or [$50,000 - ($1,800 x number of points)].~~

~~Rigid Plastic Packaging Container Compliance Point System~~

~~Points~~	~~PC Resin (Percent PCR)~~	~~Source Reduction (Percent SR)~~	~~Reuse (Times)~~	~~Refill (Times)~~
~~1~~	~~1~~	~~0.4~~	~~0.2~~	~~0.2~~
~~2~~	~~2~~	~~0.8~~	~~0.4~~	~~0.4~~
~~3~~	~~3~~	~~1.2~~	~~0.6~~	~~0.6~~
~~4~~	~~4~~	~~1.6~~	~~0.8~~	~~0.8~~
~~5~~	~~5~~	~~2~~	~~1~~	~~1~~
~~6~~	~~6~~	~~2.4~~	~~1.2~~	~~1.2~~
~~7~~	~~7~~	~~2.8~~	~~1.4~~	~~1.4~~
~~8~~	~~8~~	~~3.2~~	~~1.6~~	~~1.6~~
~~9~~	~~9~~	~~3.6~~	~~1.8~~	~~1.8~~
~~10~~	~~10~~	~~4~~	~~2~~	~~2~~
~~11~~	~~11~~	~~4.4~~	~~2.2~~	~~2.2~~
~~12~~	~~12~~	~~4.8~~	~~2.4~~	~~2.4~~
~~13~~	~~13~~	~~5.2~~	~~2.6~~	~~2.6~~
~~14~~	~~14~~	~~5.6~~	~~2.8~~	~~2.8~~
~~15~~	~~15~~	~~6~~	~~3~~	~~3~~
~~16~~	~~16~~	~~6.4~~	~~3.2~~	~~3.2~~
~~17~~	~~17~~	~~6.8~~	~~3.4~~	~~3.4~~
~~18~~	~~18~~	~~7.2~~	~~3.6~~	~~3.6~~
~~19~~	~~19~~	~~7.6~~	~~3.8~~	~~3.8~~
~~20~~	~~20~~	~~8~~	~~4~~	~~4~~
~~21~~	~~21~~	~~8.4~~	~~4.2~~	~~4.2~~
~~22~~	~~22~~	~~8.8~~	~~4.4~~	~~4.4~~

~~23~~	~~23~~	~~9.2~~	~~4.6~~	~~4.6~~
~~24~~	~~24~~	~~9.6~~	~~4.8~~	~~4.8~~
~~25~~	~~25~~	~~10~~	~~5~~	~~5~~
~~26~~	~~26~~	~~10.4~~	-	-
~~27~~	~~27~~	~~10.8~~	-	-
~~28~~	~~28~~	~~11.2~~	-	-
~~29~~	~~29~~	~~11.6~~	-	-
~~30~~	~~30~~	~~12~~	-	-
~~31~~	~~31~~	~~12.4~~	-	-
~~32~~	~~32~~	~~12.8~~	-	-
~~33~~	~~33~~	~~13.2~~	-	-
~~34~~	~~34~~	~~13.6~~	-	-
~~35~~	~~35~~	~~14~~	-	-
~~36~~	~~36~~	~~14.4~~	-	-
~~37~~	~~37~~	~~14.8~~	-	-
~~38~~	~~38~~	~~15.2~~	-	-
~~39~~	~~39~~	~~15.6~~	-	-
~~40~~	~~40~~	~~16~~	-	-
~~41~~	~~41~~	~~16.4~~	-	-
~~42~~	~~42~~	~~16.8~~	-	-
~~43~~	~~43~~	~~17.2~~	-	-
~~44~~	~~44~~	~~17.6~~	-	-
~~45~~	~~45~~	~~18~~	-	-
~~46~~	~~46~~	~~18.4~~	-	-
~~47~~	~~47~~	~~18.8~~	-	-
~~48~~	~~48~~	~~19.2~~	-	-
~~49~~	~~49~~	~~19.6~~	-	-
~~50~~	~~50~~	~~20~~	-	-

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

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

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

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

(2) Source Reduction Compliance Penalty Calculation.

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

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

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

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

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

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

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

(4) Recycling Rate Compliance Penalty Calculation.

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

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

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

(5) Floral Industry Compliance Penalty Calculation.

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

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

$$\frac{\quad}{W_{PM}}$$

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

(6) As shown in the sample table following, the Department will sum the weights of the product manufacturer's rigid plastic packaging containers for each line (and/or average of lines, when applicable) in order to calculate the weighted Violation 1 penalties due by line and in total. The "calculated compliance values" ("CC"s in the formulas above) are those submitted in the product manufacturer's certification and subsequently reviewed and approved by the Department. The "weighted penalties" by line are calculated using the formulas above. Where the "Total Penalty" is less than or equal to zero, no payment is due. (Note that this chart does not show the entire calculation, just the components identified above.)

Sample Table

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

(ef) ~~For violation (2), what criteria will be used to determine penalties for certifications submitted late?~~ Certifications submitted late ~~will~~shall be assessed the following penalties:

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

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

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

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

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

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

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

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

(~~f~~h) ~~Are there mitigating factors that the Administrative Law Judge or Board may consider in reducing the penalty amount for any violation? Yes. The~~ An Administrative Law Judge or the Department ~~Board~~ may consider~~,~~ factors in modifying or reducing penalties for violations, such as, but ~~is~~ not limited to ~~considering,~~ evidence of the following~~, as provided by the product manufacturer~~:

(1)~~.~~ Impact on diversion or sustainable markets~~.~~ in California;

(2)~~.~~ Size of ~~company.~~the product manufacturer;

~~3. Degree of cooperation or non cooperation, including documented efforts to obtain container manufacturer's documentation.~~

(~~4~~3)~~.~~ Technological feasibility of compliance;~~.~~

(~~5~~4)~~.~~ Good faith efforts to comply with this Article, including h~~H~~istory of previous compliance;~~.~~

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

~~Note:~~ Authority cited: Sections 40502 and 42325, Public Resources Code.
Reference: Sections 42310, 42321 and 42322, Public Resources Code.