

Processor Bond

Background: The initial regulations that were effective 10/1/87 and adopted 9/3/87 included a requirement to have processors obtain one of three forms of security as a condition of certification. The three types of security accepted: financial guarantee bond; irrevocable certificate of deposit issued by a bank authorized to do business in CA and insured by FDIC; irrevocable letter of credit issued by a bank or savings and loan authorized to do business in CA and insured by FDIC or FSLIC.

If the security expired, the processor was subject to suspension or revocation of the certificate to operate. The Department was required to be named as the payee on the security.

The initial statement of reasons explained that was that there was a short time period prior to implementation of the recycling program and DOR would be certifying processors (to accept material beginning 10/1/87) without the benefit of conducting extensive background investigations and did not have the time nor qualified staff to review financial statements. Additionally, any audits conducted may not occur for several months after the State had made payments to the processors. In order to protect the Fund should fraudulent invoices be submitted, section 2100(a) was put into regulation.

The security had to identify the conditions under which the Division could act on the security "in the event the operator engages in dishonesty or substantial incompetence or fraud (including, but not limited to, the submission of grossly negligent or fraudulent prepared reports of invoice to the State of California...) and be valid for the 5-year period of certification. In May of 1991, the conditions were changed to simply state that if the processor has been paid a greater sum than what they were entitled to and/or there was money due and owed by the processor to the State, the Division could act on the security.... But then by November 1991 the language reverted to the statement about dishonesty, fraud, etc.

The amount of the security changed over time.... and was subject to adjustment within 30 days if the Department found the amount of the payments received during the stipulated time period changed prior to the security's expiration. The following amounts were in regulation over the time period in effect:

- 10/1/1987 – amount processor received from the Fund over a *one-month period* (calculated by estimating 1/12 of the annual volume of beverage containers to be accepted);
- 5/8/91 – regulations were proposed to change the amount based on what the processor received from the Fund over a *one-week period* (calculated by estimating ¼ of the average monthly volume of beverage containers to be accepted) – but it appears based on the regulations effective 11/14/91 that this did not happen at this time;
- 11/14/91 – (section 2400 effective 11/14/91) amount processor received from the Fund over a *one-month period* (calculated by estimating 1/12 of the annual volume of beverage containers to be accepted);
- 12/9/91 – amount processor received from the Fund over a *one-week period* (calculated by estimating ¼ of the average monthly volume of beverage containers to be accepted);

Regulations effective 10/7/94 – section 2400 was amended to repeal the provision for the processor security. The Notice of Proposed Action doesn't detail why this specific section was changed. The Notice of Proposed Action simply states "Processor payment bond requirements are repealed in section 2400." However, regulation workshops were conducted beginning in 1992 to determine the impact the regulations had on businesses. According to documents reviewed, the regulations were drafted in attempt to "eliminate burdensome and unessential requirements".