

REQUEST FOR APPROVAL

To: John Halligan
Acting Deputy Director, Division of Recycling

From: Mike Miller
Branch Manager, Operations Branch

Request Date: July 9, 2012

Decision Subject: Approval of Notice suspending the Individual Commingled Rate Survey (ICRS) Program & Two-Year Extension of Earned 2013 ICRS rates

Action By: August 21, 2012

Summary of Requested Action:

The attached Notice, prepared for distribution to operators of curbside, drop-off/collection, and community service programs, announces the suspension of the Individual Commingled Rate Survey (ICRS) program, and the establishment of a two-year ICRS rate for the 2013 and 2014 calendar years. The two-year rate is intended to reduce the negative financial impacts to ICRS participants during these hard economic times.

Time factors:

1. The Commingled Rate Survey methodology workshop is scheduled for August 17, 2012. Typically we answer questions about the ICRS program at this public workshop.
2. Typically the deadline for submitting an ICRS application is September 1 of each year. We usually publish the application form in July to allow participants time to complete and submit them. We have not yet published an application and we are receiving inquiries.

Options:

1. Suspend the ICRS program and grant a two-year ICRS rate for the 2013 and 2014 calendar years.
2. Continue the ICRS program as it has been over the last several years, with no dedicated staff provided to audit, monitor, and oversee the program.

Recommendation: Staff recommends that you approve suspension of the ICRS Program and grant a two-year ICRS rate for 2013 and 2014 calendar years.

Deputy Director Action:

On the basis of the information and analysis in this Request for Approval and the findings set out below, I hereby approve the Notice Suspending the ICRS Program and extending the earned 2013 Rates for two years.

Dated: _____

Dated: _____

John Halligan
Acting Deputy Director, Division of Recycling

Carol Mortensen
Director

Attachments:

1. Notice proposed for publication if solution approved as outlined in this request
2. Chart showing number of ICRS Participants by Rate Year and number of Certified Entities they represent (curbsides, collection programs, community service programs)
3. Chart/graph "Market Statistics Unit – July 2011 CMRS/ICRS Analyses
4. Graph "Number of ICRS Participants"
5. Chart: "Number of CMRS & ICRS field weeks per staff member (by Fiscal Year) – shows use of staff members for Statewide surveys and ICRS, including staff from other Divisions and units
6. Chart of Market Statistics Section processes & calendar deadlines
7. Table of Staff from Market Statistics Section and from other areas with number of weeks spent on CMRS and ICRS surveys (by Fiscal Year)
8. Two charts of Field Schedule Snapshots (by survey/rate years 2012 and 2013)
9. Application form for 2014 Rate Year ICRS (will not be released if program suspended)

Background and Findings:

The California Beverage Container Recycling Program (Program) allows consumers to return beer, soda, water, and other beverage containers made of aluminum, glass, plastic, or bimetals to recycling centers where they receive the CA Refund Value (CRV). Loads containing both CRV containers and non-CRV containers (excluding line breakage, rejected, and out-of-state containers) can be redeemed by weight without sorting.

A load consisting of both CRV and non-CRV containers is called a commingled load. Payment of CRV is based on a statewide average ratio of CRV container weight to the weight of all containers (excluding line breakage, rejected, and out-of-state containers), known as the commingled rate.

ICRS Program & Statutory Authority

The California Beverage Container Recycling and Litter Reduction Act, Public Resources Code, Division 12.1, Chapter 6, Section 14573.51(b) states that "The department may establish a procedure whereby the operators of curbside programs may apply for an individual commingled rate...."

Title 14, California Code of Regulations, Subchapter 7, Article 3, Subsections 2620-2645; Subchapter 8, Article 2, Subsections 2660-2685; and Subchapter 9, Article 3, Subsections 2720-2745 provide dropoff or collection, curbside, and community service programs with the option of conducting an Individual Commingled Rate Survey (ICRS) to determine a rate solely for their program(s).

The attached application form describes for program participants the steps necessary to conduct an ICRS to obtain an individual rate for the calendar year following a full survey year.

Market Statistic Section Responsibilities

The Market Statistics Section (MSS) within the Recycling Programs Operations Branch conducts field surveys during the year, and throughout the state, in order to calculate, analyze, and publish recycling rates which determine where \$1 billion of the Fund is dispersed annually.

In addition to publishing Statewide rates for California, MSS also oversees the ICRS program, allowed by Public Resources Code, Section 14573.51(b), which states that: "The department

may establish a procedure whereby the operators of curbside programs may apply for an individual commingled rate....”

Historically, and in keeping with the California Code of Regulations, Title 14, Sections 2620(a), 2660(a), and 2720(a), MSS has published a Notice every July informing operators of curbside, drop-off / collection, and community service programs of the opportunity to participate in the ICRS program. The Notice, posted on the web and sent by mass mailing to program participants, provides the information needed to obtain an application package for participation in the ICRS for a particular rate year.

The suspension Notice with this approval packet begins with the ICRS survey year that would normally start October 1, 2012 and end in September 2013, with earned rates effective from January 1 through December 31, 2014.

Because of staff cuts in the Market Statistics Section over the last several years, and the growing workloads in both the CMRS and ICRS programs, the current number of MSS staff can't provide the oversight required for both programs. Therefore, we recommend the suspension of the ICRS program commencing with the 2014 survey year (October 2012 through September 2013), which would allow the shifting of MSS staff resources from the optional ICRS program to the mandated CMRS program.

Analysis:

- 1) The Commingled Rate Survey Program (CMRS) is **mandated** by provisions of the Act, PRC Section 14549.5
- 2) The Individual Commingled Rate Survey Program (ICRS) program is **optional** under PRC Section 14573.51(b) (noted above).
- 3) The CMRS program is worth approximately **\$1.1 BILLION annually**.
- 4) The ICRS program is worth approximately **\$7 million annually**.
- 5) The CMRS program currently requires a minimum of ten (10) PY's annually to perform according to regulations.
- 6) The ICRS program currently requires approximately four (4) PY's annually to perform according to regulations.
- 7) The CMRS program benefits approximately 3,000 recycling programs around the state of California, including: recycling centers (RC), curbside programs (CS), drop-off / collection programs (CP), and community service programs (SP).
- 8) The ICRS program benefits 59 participants around the state that process material for over 300 curbside programs, drop-off / collection programs, and community service programs. (no RCs are in the ICRS program)
- 9) The Fund faces an annual deficit of \$100 million. MSS conducts field surveys to gather the data used to calculate Statewide rates for the CMRS program. Because the size of the CMRS is \$1.1 billion, a 1% error in the rates calculated by the Section will have a negative impact of \$10 million on the Fund, the recycling industry, and consumers.
- 10) Some procedures used by MSS are up to 15 years old. MSS staff believes there are some deficiencies in CMRS survey methods; however, they do not have adequate time to conduct research and studies, or work with outside consultants, to provide management with suggestions for improvement, let alone implement the changes and improvements needed for the CMRS program. It is vital that MSS staff have the time to perform CMRS surveys and workloads accurately to protect the Fund from deficits and to provide the recycling industry and consumers with appropriate and accurate reimbursements.

- 11) Because of budget cuts and organizational restructuring, MSS has lost several analyst positions over the last few years. In addition, MSS currently has three (3) vacancies out of nine (9) positions: Section Supervisor (former supervisor retired and passed away over six months ago); Office Technician (administrative and office support); and one Recycling Specialist (office and field survey work). The Market Statistics Section currently has six (6) analyst staff; however, two (2) of them are new analysts to the Section, and one senior analyst currently functions as the Section's interim supervisor.
- 12) The ICRS program has grown from eight (8) participants in 2002 to 59 participants now, representing over 300 curbside, collection and community service programs; however, there has NEVER been a BCP submitted to address the growing ICRS workloads, problems/issues, **fraud risks**, and associated staffing needs.
- 13) The growing ICRS program workloads pull MSS staff away from the much larger and legislatively mandated CMRS program. The result is less time available for CMRS workloads and field studies, which increases the risk that CMRS data and rates are less accurate, and increases the threat of loss to the Fund.
- 14) The ICRS program currently allows program participants to conduct **self-surveys** of their material to determine their own commingled rates for aluminum, glass, HDPE, and PET materials above the Statewide rate. Without adequate staff, MSS can't perform the due diligence to audit, monitor, and oversee ICRS participants. This shortage of staff increases the risk of errors and fraud by ICRS participants, which impacts the Fund. Section staff estimates that errors and fraud negatively impact the fund by \$500,000 to \$1 million annually. This negative impact to the Fund will grow as MSS staff are less able to audit, monitor, and oversee ICRS participants around the State.
- 15) MSS staff has felt the personal impacts of more and more stress created by growing workloads, decreasing staff levels, and the mounting conflict between ICRS and CMRS workloads. This negatively affects the moral of Section staff.
- 16) During the last year or two, MSS has increasingly borrowed staff from other Sections to assist with CMRS and ICRS field surveys. While these borrowed staff are greatly appreciated, unfortunately, few fully understand the science or logic of the field work performed by the Section. As a result, more time is spent on field surveys, more work and responsibility fall onto MSS staff, and there's an increased potential for errors in CMRS and ICRS rates.
- 17) There has not been a dedicated statistician in the Section since February of 2011. In addition, MSS's former supervisor had a major role in calculating and analyzing statistics for the Statewide rates. This year, MSS analysts will be on their own for the first time when the rate calculations take place in October and November, which will require additional staff time to learn the processes and procedures.
- 18) Section staff have ideas how to assist the department in achieving the 75% Diversion Plan, but has little time to read the document, research the issues, and submit viable and thought out ideas to assist the department.
- 19) MSS has databases with multiple years of survey data relating to rates, different kinds of beverage containers, etc. Unfortunately, MSS does not have adequate time to provide CalRecycle management with data that could assist with the 75% Diversion Plan, or Beverage Container Program Reform.

Proposed Options:

Option 1: Suspend the ICRS program and grant a two-year ICRS rate for the 2013 and 2014 calendar years.

Pros

- 1) The suspension of the ICRS program will allow the Market Statistics Section (MSS) to redirect staff resources currently utilized for ICRS workloads to CMRS workloads. This will allow the Section to concentrate on CMRS planning, research, reports, and field studies, and will help the Section provide more accurate Statewide CMRS rates, and assist with the solvency of the Fund.
- 2) The suspension of the ICRS program will allow Cal-Recycle to review and analyze the ICRS program to determine how to best proceed in the future.

(Note: This “future” could include a permanent suspension of ICRS or a complete redesign and streamlining of the program, including providing the required number of staff to properly administer and oversee the ICRS program)
- 3) Providing a two-year ICRS rate (2013 & 2014) for qualifying participants will reduce the negative financial impact to participants during a hard economic time, and help mitigate most immediate opposition to the suspension.

Con

- 1) The response by some ICRS program participants to the suspension of the ICRS program may be negative and result in dialogues, appeals, and meetings which would engage staff and management’s time.

Option 2: Continue the ICRS program as it has been over the last several years, with no dedicated staff provided to audit, monitor, and oversee the program.

Pros

- 1) No participant complaints.

Con

- 2) Inadequate staffing to properly audit, monitor, and oversee both the CMRS and ICRS programs to complete regulatory requirements.
- 3) Staff time will continue to be taken away from the mandated and much larger CMRS program to work on the optional, and much smaller, ICRS program.
- 4) Increased risk of errors and fraud by ICRS participants, with a negative financial impact on the Fund and the recycling industry as a whole.
- 5) Increased risk of errors in Statewide CMRS rates resulting in negative impacts to the Fund, the recycling industry, and consumers.