

Statement of Reasons Changes Without Regulatory Effect

Pursuant to Title 1, Division 1, Chapter 1, Article 2, Section 100, of the California Code of Regulations (CCR), an agency may add to, revise or delete regulatory text without complying with the rulemaking procedure only if the change is “without regulatory effect”. Such changes include: renumbering, reordering or relocating a regulatory provision”; “deleting a regulatory provision for which all statutory or constitutional authority has been repealed”, and “making a regulatory provision consistent with a changed California statute if...(A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.”

The Department of Conservation, Division of Recycling (Division) is requesting adoption of nonsubstantive revisions to the text of the CCR. The passage of SB 332/Sher (Chapter 815, Statutes of 1999), which became operative on January 1, 2000, amended Public Resources Code (PRC) Section 14571 regarding the conditions required in certifying a recycling center to operate less than 30 hours per week. Because current regulations (CCR § 2030(h)) reflect the conditions established by AB 380/Margolin (Chapter 1069, Statutes of 1991), revision of the CCR is necessary to amend inconsistent and superseded regulatory provisions to ensure compliance with the statute as operative on January 1, 2000.

The California Beverage Container Recycling and Litter Reduction Act (Act) requires the Division to establish a processing fee and a processing payment if scrap values of empty beverage containers are less than the cost of recycling, as determined by the Division. Section 14575 as amended by AB 1244/Olberg (Chapter 817, Statutes of 1999), effective January 1, 2000, required the Division to conduct cost surveys of recycling centers prior to January 1, 2001, and every third year thereafter. However, AB 28/Jackson, Pavley (Chapter 753, Statutes of 2003) requires the Division to conduct cost surveys on or after January 1, 2004, and every second year thereafter. Because the current regulatory provision (CCR § 2960(a)) is inconsistent with and superseded by AB 28, the Division has no discretion to adopt a change that differs in substance from the statute. Amendment of the regulation is necessary to make it consistent with the operative statute.

In addition, AB 87/Sher (Chapter 1266, Statutes of 1992) made changes regarding the calculation of the processing fee and processing payment. Actual costs for certified processors were no longer required in the calculation, thereby making current regulations (CCR §§ 2965 and 2970) inconsistent with statute. Section 14575 removed processor costs from being included in the processing fee and processing payment calculation. The Division has no discretion to adopt a change that differs in substance from the statute, making the repeal of the related regulatory provisions necessary for purposes of consistency with operative law.

Formerly, Section 14542 of the PRC required the Division to submit an annual report to the Governor and Legislature, as specified. SB 332 repealed this provision in 1999, but failed to also repeal Section 14571.9, which contained a supplementary reference to the annual report. The following year, this oversight was corrected, and SB 1906/Sher (Chapter 731, Statutes of 2000) repealed Section 14571.9. Current regulatory provisions, (CCR §§ 2305, 2310, and 2505) contain reference to these repealed sections.

Listed below, in the order they appear in the CCR, are the subsections, which contain changes without regulatory effect, and the reasons why the changes will have no regulatory effect.

Subsection 2030(h)(3): This amendment is necessary to remove the condition that the Department hold a public hearing for certified recycling centers wishing to operate less than 30 hours per week. This condition is no longer consistent with current statute. This requirement was removed from Section 14571(c) with the passage of SB 332

Subsection 2305 Reference: This amendment is necessary to delete an obsolete reference to Section 14571.9. Section 14571.9 was repealed from the Act by SB 1906.

Subsection 2310 Reference: This amendment is necessary to delete an obsolete reference to Section 14571.9. Section 14571.9 was repealed from the Act by SB 1906.

Subsection 2505 Reference: This amendment is necessary to delete obsolete references to Sections 14542(c) and 14571.9, which were repealed from the Act. Section 14542(c) was repealed by SB 332. Section 14571.9 was repealed SB 1906.

Subsection 2960(a): This amendment is necessary to make current regulations consistent with the changes made to statute with the passage of AB 28. AB 28 amended Section 14575 requiring the Division to conduct cost surveys of recycling centers "...on and after January 1, 2004, and every second year thereafter." Previous statute, as enacted by AB 1244, required the Division to conduct cost surveys ..."on or before January 1, 2001, and every third year thereafter."

Subsection 2965: The repeal of this regulatory section is necessary as it is no longer consistent with current statute. AB 87 made changes to Section 14575 regarding the calculation of the processing fee and processing payment. The amended language no longer required actual costs for certified processors in the calculation, making this regulatory section obsolete.

Subsection 2970: This amendment is necessary to be consistent with the deletion of Subsection 2965.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code Section 14530.5(b).

REFERENCE

Revisions to the CCR, Sections 2030, 2305, 2310, 2505, 2960, 2965, and 2970, are intended to correct inconsistencies with statute. These revisions will update the current regulations by deleting obsolete provisions and section references.

STATEMENT REGARDING IMPACT

The changes proposed in this regulatory package do not materially alter any requirement, right, responsibility, condition, prescription or any other regulatory element of any CCR provision.