

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a regulatory provision”; “deleting a regulatory provision for which all statutory or constitutional authority has been repealed”, and “making a regulatory provision consistent with a changed California statute if... (A) the regulatory provision is inconsistent with and superseded by the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.”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 AB 1763/Committee on Natural Resources (Chapter 202, Statutes of 2005), effective on January 1, 2006, amended Public Resources Code (PRC) Section 14574 regarding the reporting requirements for beverage distributors. Because current regulations (CCR §2310) reflect the conditions established by SB 332/Burton (Chapter 815, Statutes of 1999), revision of the CCR is necessary to amend inconsistent and superseded regulatory provisions to ensure compliance with the statute as operative on January 1, 2006.

The California Beverage Container Recycling and Litter Reduction Act (Act) requires the distributors of beverage containers to pay to the Department a redemption payment for every beverage container, other than a refillable beverage container, sold or transferred in the State. Section 14574 as amended by AB 1763, effective January 1, 2006, requires the distributors of all beverage containers to pay redemption payments no later than the last day of the third month following the sale. Previously, SB 332 created an inconsistency between redemption payment deadlines for all non-beer and malt beverages containers and all beer and malt beverage containers. SB 332 required the distributors of all beer and malt beverage containers to pay redemption payments no later than the last day of the third month following the month of sales. The redemption payment deadline for all non-beer and malt beverage containers remained at the tenth day of the second month following the month of sales. Because the current regulatory provision (CCR § 2310(a)) is inconsistent with and superseded by AB 1763, 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.

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 2310 (a)(1): This deletion is necessary to remove the reporting requirement that is no longer consistent with current statute. This requirement was removed from Section 14574(a) with the passage of AB 1763.

Subsection 2310(a)(2): Has been renumbered to subsection 2310(a)(1) due to the deletion of subsection 2310(a)(1) above. In addition, the deletion of reference to “all beer and malt” is necessary to define when reports for all beverage containers, sold or transferred, shall be submitted to the Division. With the passage of AB 1763, the reporting deadline in this subsection now applies to the sale and transfer of all beverage containers.

Subsection 2310(a)(3)(B): Has been renumbered to subsection 2310(a)(2)(B) due to the deletion of subsection 2310(a)(1). This deletion is necessary to define what prefix shall be added to the identification number required on the distributor reporting form DR-3 (1/04).

Amended subsections 2310(a)(2) and 2310(a)(3) are necessary to revise the number designations of each section changed by the deletion of subsection 2310(a)(1).

AUTHORITY

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

REFERENCE

Revisions to the CCR, Section 2310(a) are intended to correct inconsistencies with statute. These revisions will update the current regulations by deleting obsolete provisions.

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.