

STATEMENT OF EMERGENCY

CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION CHAPTER 5. DIVISION OF RECYCLING

INFORMATIVE DIGEST

The recent passage of AB 3056 (Chapter 907, Statutes of 2006) changed the process for determining how handling fees are calculated for eligible recycling centers. In order to avoid future shortfalls in handling fee payments, AB 3056 provides for a gradual increase in the handling fee appropriation and a cost survey to determine handling fees to be paid on and after July 1, 2008. This bill authorizes the Department to expend up to \$31 million from 7/1/05 to 6/30/06, \$33 million from 7/1/06 to 6/30/07, and \$35 million from 7/1/07 to 6/30/08 for handling fee payments. Effective 7/1/08, there will not be a monthly or annual cap on handling fee payments.

FINDING OF NECESSITY

AB 3056 authorizes the Division to conduct a cost survey of handling fee sites during 2007, and every two years thereafter. Handling Fee emergency regulations are necessary in order to ensure that the cost survey criteria are in place prior to the cost surveys being started early in 2007. This cost survey will be in conjunction with the cost survey performed by the Division to determine processing payments and processing fees. Handling fee site costs will be compared with the costs of non-handling fee sites. The handling fee will be calculated by subtracting the non-handling fee site costs from the handling fee site costs. This calculation will be used to determine the handling fee payments on and after July 1, 2008.

Subchapter 2. General Requirements

Article 5. Administrative Actions

§ 2125. INSPECTION AUTHORITY

Subsection 2125 (a) (5) has been amended to add Public Resources Code Section 14585 which gives the Division the authority to obtain allowable cost survey data from certified recycling centers.

Section 14536 (b) has been added to the Authority Section of Section 2125 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the California Beverage Container Recycling and Litter Reduction Act (Act).

Section 14585 has been added to the Reference Section of Section 2125 to give the Division the authority to collect Handling Fee Cost Survey data from certified recycling centers.

Subchapter 6. Recycling Centers

Article 2. Handling Fees

Subsection 2518 (a) (1) has been amended to delete (a)(3) and add (e) to reference the appropriate subsection of Section 14585 to allow the Department to utilize a standard container per pound rate for each material type to calculate handling fee payments.

Subsection 2518 (a) (2) has been amended to add (A) to Section 14585(a) (2) because (A) was added to Section 14585 (a)(2) in AB 3056.

Subsections 2518 (a) (4) (A) and (B) have been deleted because these sections are no longer necessary. Section 14585 (a)(5) (A) of the Act was revised in AB 3056 to state the amount of the handling fee per eligible container until June 30, 2008. Section 14585 (a) (6) (A) of the Act states the handling fee payment cannot be more than \$2,300 per month. Thus, it is redundant to also have Sections 2518 (a) (4) (A) and (B) of the regulations state the amount of the handling fee payment. New Section 14585 (a) (5) (B) states that on and after July 1, 2008, the department shall pay a handling fee per eligible container in the amount determined pursuant to subdivision (f). Section 14585 (f) of the Act is a new subsection and it describes how the handling fee cost survey will be conducted.

New Subsection 2518 (a) (4) has been added because AB 3056 requires the Department to pay a handling fee per eligible container as determined by the handling fee cost survey required in Section 14585 (f) of the Act.

Subchapter 12. DOR Requirements

Article 3. Handling Fee Payments

Article 3. Handling Fee Payments has been added to Subchapter 12. because AB3056 requires the Department to conduct a cost survey in 2007, and every two years thereafter, to determine future handling fee payments beginning with the payments for the 2008/2009 fiscal year.

New Section 2990. Allowable Costs for Handling Fee Recycling Centers has been added to the regulations. AB 3056 added Section 14585 (f) (1) of the Act. Section 14585 (f) (1) requires the Department to include only those allowable costs contained in the regulations adopted by the Department to conduct cost surveys pursuant to Subdivision (b) of Section

14575. Thus, the costs in new Section 2990 are the same as the costs in Section 2960 Allowable Costs for Recycling Centers and Section 2965 Allowable Costs for Processors.

Section 14536 (b) has been included in the Authority Section of Section 2990 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the Act.

New Section 2995. Allocation of Allowable Costs for Handling Fee Sites has been added to the regulations. This section has been added to the regulations because AB 3056 requires the Department to use only those allowable costs currently authorized by statute and defined in Sections 2960 and 2965 for recycling centers and processors. This new section is necessary to mirror Section 2970 for the cost surveys conducted pursuant to Section 14575 (b) of the Act.

Section 14536 (b) has been included in the Authority Section of Section 2995 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the Act.

New Section 2997. Notification of Handling Fee Changes has been added to the regulations. This section has been added to the regulations because AB 3056 requires the Department to calculate the handling fee payment by using cost surveys in conjunction with the cost surveys performed by the Department to determine processing payments and processing fees. Thus, the Department will give notice of handling fee changes to interested persons 15 days before the effective date of the change. The Department provides written notice of revised, terminated or newly established processing fee and processing payments to all interested persons at least 15 days prior to the effective date of the proposed change.

Section 14536 (b) has been included in the Authority Section of Section 2997 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the Act.

FINDING OF EMERGENCY

AB 3056, passed as urgency legislation, authorizes the Department (pursuant to Public Resources Code Section 14536 (b) (1)) to adopt emergency regulations to implement Section 14585 of the Beverage Container Recycling and Litter Reduction Act. To comply with and to implement provisions of AB 3056, it is necessary for the Department to adopt emergency regulations.

The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code Section 14536 (b)(1) and (2) which provides that "(1) The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14549.2, 14549.7, 14550, 14561, 14574, 14575, 14585 , 14588.1, 14588.2, and 14591...(2) Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section

11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare....”

AB 3056 changes the way handling fee payments to convenience zone recyclers are calculated. AB 3056 institutes a new system to determine handling fee payments per container. The Department previously conducted cost surveys to determine the cost of recycling each material type at non-handling fee recipient recyclers. This survey determined whether it costs the recycler more to accept, process and ship materials than the current scrap value for each material type. AB 3056 gives the Department the authority to conduct cost surveys of handling fee recipient recyclers. The Department must perform a separate cost survey of handling fee recipient recyclers and compare the costs to those of non-handling fee recipient recyclers. The cost differential between the cost of recycling the two types of containers will be the new handling fee payment per container. The Department is authorized to perform the cost surveys every other year, and the next scheduled survey is for calendar year 2007. Emergency regulations must be effective in early 2007 stating the allowable costs for Handling Fee Recycling Centers and the Allocation of Allowable Costs for Handling Fee Sites.

AUTHORITY

These regulations are submitted pursuant to the Department’s authority under Public Resources Code subsections 14530.5 (b) and 14536 (b).

REFERENCE

Amended 14 California Code of Regulations (CCR) Sections 2125 and 2518 and adopted Sections 2990, 2995 and 2997 are intended to implement, interpret and make specific Public Resources Code Section 14585.

LOCAL MANDATE

The proposed regulations do not impose a mandate on local agencies or school districts.

COSTS

No additional costs or savings are anticipated for the Department of Conservation, Division of Recycling in implementing this emergency regulation package. These emergency regulations do not place any additional requirements on recycling operations.

The proposed emergency regulations will not result in either cost or saving to any other State Agency, local agencies or school districts. Further, these proposed emergency

regulations will not result in any non-discretionary cost or savings to any local agencies, nor will they result in cost or savings to federal funding for the State.

NOTICE OF EMERGENCY REGULATORY ACTION

The Department of Conservation has complied with the requirement to provide notice of the proposed emergency rulemaking action pursuant to Government Code Section 11346.1 (a) (2).

A copy of the memorandum transmitting the proposed emergency text and the proposed Statement of Emergency to interested parties is included in the emergency rulemaking file.