

**NOTICE OF PROPOSED EMERGENCY ACTION**  
CALIFORNIA CODE OF REGULATIONS  
TITLE 14. NATURAL RESOURCES  
DIVISION 2. DEPARTMENT OF CONSERVATION  
CHAPTER 5. DIVISION OF RECYCLING

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The Department of Resources Recycling and Recovery (Department) is proposing to adopt emergency regulations to expand the current certification requirements for both new or renewal certification of recycling centers and processors to operate in compliance with the Beverage Container Recycling and Litter Reduction Act. The Department proposes to adopt emergency regulations in the California Code of Regulations (CCR), commencing with Subchapter 2, Chapter 5, Division 2, of Title 14.

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

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to the Department. Written comments, which offer a recommendation and/or objection, or

support the proposed amendment, should indicate the amended section to which the comment or comments are directed.

Comments on the proposed emergency regulations must be submitted directly to OAL within five calendar days of when OAL posts the proposed emergency regulations on the OAL web site. You may submit comments on proposed emergency regulations to the OAL Reference Attorney by mail to 300 Capitol Mall, Suite 1250, Sacramento, California 95814, by fax to (916) 323-6826, or by e-mail to [staff@oal.ca.gov](mailto:staff@oal.ca.gov).

When you submit a comment to OAL, you must also submit a copy of your comment to CalRecycle to [DORRegulations@CalRecycle.ca.gov](mailto:DORRegulations@CalRecycle.ca.gov) or to:

Sharon Siozon  
Certification Requirements Emergency Regulations  
Department of Resources Recycling and Recovery, Division of Recycling  
801 "K" Street, MS 19-01  
Sacramento, CA 95814

OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency regulation currently under OAL review and include the topic of the emergency.

The public comment period will commence on December 9, 2013 when the emergency regulations are posted on OAL's website. The public comment period will close on December 14, 2013. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on December 14, 2013. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file.

Copies of the text, the Finding of Emergency, and all of the information upon which this proposal is based is available upon request and at our website:

[www.calrecycle.ca.gov/Laws/Rulemaking/](http://www.calrecycle.ca.gov/Laws/Rulemaking/). The rulemaking file is available to the public for review during normal business hours at the Department, 801 "K" Street, 19th Floor,

Sacramento, California. Please contact the agency contact person, Sharon Siozon, at (916) 322-1760. General or substantive questions regarding this file may also be directed to Sharon Siozon. The back-up agency contact person for this rulemaking file is Debra Kustic, who may be contacted at (916) 341-6207. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

Attached to this notice are the proposed regulatory text and the Finding of Emergency. These documents will be posted on CalRecycle's website at the following address: <http://www.calrecycle.ca.gov/Laws/Rulemaking/>.

If you have any questions regarding this proposed emergency action, please contact Sharon Siozon at (916) 322-1760 or [sharon.siozon@calrecycle.ca.gov](mailto:sharon.siozon@calrecycle.ca.gov).

#### FINDING OF NECESSITY

The Department reviews each application for completeness, performs verification of the data submitted using various databases, and determines if all appropriate documents have been included. Mandated timelines are applied to the initial review of an application (15-working days) and to the final approval once determined complete (45-calendar days). SB 96 extends these timelines from fifteen (15) to thirty (30) days and forty-five (45) to sixty (60) days. These extended timelines do not necessarily mean that the application review and approval period will take those full timeframes to complete.

The Department is proposing emergency regulations to meet the mandates of SB 96 by establishing guidelines for providing precertification training and examination to both new applicants and renewal applicants for certification. The regulations will provide for precertification training and examination to be conducted by Department staff. Applicants for certification must take the training and pass the examination before submitting the application for certification.

In addition, the emergency regulations, under the authority of SB 96 requiring that applicants for certification “meet all other qualification requirements prescribed by the Department”, applicants will be asked to demonstrate readiness to operate a recycling center or processing facility through a “Readiness Plan” included in the certification application. Once certified, the operator of a recycling center or processing facility will be asked to state that all necessary local permits and licenses that are required to legally operate on the site have been obtained.

The California Code of Regulations, Title 14, Division 2, Chapter 5 will amend or add the following sections:

**§2010** will be amended to add the definitions of new applicant and renewal applicant and specify the new requirements for precertification for certification applications. These amendments are necessary to clarify who must meet the new precertification training and examination requirements.

**§2012** will be added to outline the new precertification training and examination requirements. These additions are necessary to make specific and implement the new precertification training and examination requirements

**§2015** will be amended to include the requirement that applications filed must include verification of completion of the precertification requirements. These amendments are necessary to require new and renewal applicants to provide verification of completion of the new precertification and examination training requirements.

**§2030** will be amended to extend the review and approval timelines for applications, require verification of completion of the precertification requirements, and clarify that the review of applications will include assessment of the applicant’s readiness. These amendments are necessary to revise the regulations for consistency with the new application timelines established in statute, include additional requirements for the precertification and training and examination, and other qualification requirements prescribed by the Department.

**§2040** will be amended to accommodate the extended review timeframes for application submissions. These amendments are necessary to revise the regulations for consistency with the new application timelines established in statute.

**§2045** will be amended to update the required information on the application and add the new requirement for a readiness plan. These amendments are necessary to include additional requirements for the precertification and training and examination and other qualification requirements prescribed by the Department.

**§2405** will be amended to include notification by the operator of the processing facility of the operation date, acquisition of necessary facility location permits, and any changes to the operator voucher. These amendments are necessary to include other qualification requirements prescribed by the Department to complete the certification of a processor.

**§2505** will be amended to include notification by the operator of the recycling center of the operation date, acquisition of necessary facility location permits, and any changes to the operator voucher. These amendments are necessary to include other qualification requirements prescribed by the Department to complete the certification of a recycling center.

#### AUTHORITY

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

#### REFERENCE

Title 14 California Code of Regulations (CCR) amended Sections 2010, 2015, 2030, 2040, 2045, 2405, 2505 and added Section 2012 are intended to implement, interpret and make specific Public Resources Code 14538 and 14539.

#### INFORMATIVE DIGEST

The California Beverage Container Recycling and Litter Reduction Act, AB 2020/Margolin, Chapter 1290, Statutes of 1986 (Act), created the California Beverage Container Recycling Program (Program) and established the Division of Recycling to administer the Program. The Division of Recycling is within the Department of

Resources Recycling and Recovery (CalRecycle/Department). The intent of the Program is to provide increased and convenient beverage container redemption and recycling opportunities for consumers. This is accomplished through the establishment of the California Refund Value (CRV) for eligible beverage containers and working with industry participants such as recyclers and processors who are certified by the Department.

On September 26, 2013, SB 96 (Chapter 356, Statutes of 2013) was signed into law by Governor Brown, amending Sections 14538 and 14539 of the Act pertaining to recyclers and processors. The amendments require that on and after January 1, 2014, applicants for certification and applicants for renewal of certification as a recycling center or processor, must complete precertification training and meet all other qualification requirements prescribed by the Department, including, but not limited to passing an examination. The time period between the signing of the bill and the effective date of the new mandates does not give the Department sufficient time to establish new regulations through non-emergency means.

The Department finds that an emergency exists to add and amend existing regulations in order to implement statutory mandates of Sections 14538 and 14539 of the Public Resources Code, Division 12.1. The proposed regulations would add or amend sections 2010, 2012, 2015, 2030, 2040, 2045, 2405 and 2505 of the California Code of Regulations (CCR) Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling, Subchapter 2, Articles 1 and 2. The proposed regulations will implement the mandated requirements by the effective of January 1, 2014. The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code Sections 14536 (b) (1) and (2) which provides that “**(b) (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.

There are no comparable federal regulations or statute to these proposed regulations. The proposed regulation is not inconsistent or incompatible with existing state regulations. The Program is unique to the state of California and there is not a similar program within the state. There are no other matters prescribed by statute applicable to this specific state agency or to any specific regulation or class of regulations.

The Beverage Container Recycling Program has achieved significant success over the past several years, but that success has been accompanied by significant challenges including, most especially, a tremendous growth in workload and a \$100 million, statutorily-driven, structural deficit. To address these challenges, the Program must shift the balance of its efforts from primarily encouraging recycling to an increased emphasis on program fiscal integrity, quality control and better use of information resources. Doing so will (1) help address the structural deficit by reducing losses and operating costs and (2) help address workload increases through improved efficiency and effectiveness.

The Department certifies applicants wishing to operate recycling centers and processing facilities in order to be reimbursed the CRV paid by them to consumers. Without certification, no reimbursement of CRV is paid to an operator of a recycling facility or processing facility. A Certification is good for five years after which the participant must recertify. As a result, every processor and recycler is certified at least once every five years.

At the present time, the Program's minimum requirement for participation (i.e., for certification) is extremely low and does not require either a vested interest or a demonstrated industry knowledge from the certification applicant. This low threshold encourages the establishment of recycling centers and increases the ease with which consumers can return their containers, but it also makes inefficiency more likely and increases the risk of inappropriate reimbursements (either through willful fraud or

through simple operational error). In turn, inefficiency and increased risk may lead to inappropriate payments which may contribute to the structural deficit.

While the Department of Justice (DOJ) has previously estimated container redemption fraud at \$40 million a year, there is no reliable estimate of the total losses to the Fund from fraud and other inappropriate activities. CalRecycle expects to make a reduction in such losses through measures to train and prepare participants in the Program such as recyclers and processors. There are no anticipated direct measurable nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, the promotion of fairness or social equity, or the increase in openness and transparency in business and government associated with these regulations.

#### SPECIFIC AGENCY STATUTORY REQUIREMENTS

There are no specific agency statutory requirements relevant to this rulemaking.

#### LOCAL MANDATE DETERMINATION

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

#### FISCAL IMPACT ESTIMATE

No additional costs or savings are anticipated for the Department of Resources Recycling and Recovery, Division of Recycling in implementing this emergency regulation package. These emergency regulations place additional requirements mandated by Public Resources Code 14538 and 14539 for recyclers and processors applying for certification.

Fiscal Impact on State Government will be limited to the costs incurred by the Department for staff, equipment and travel. Those costs were appropriated by AB 110, Budget Act of 2013, Chapter 20, Statutes of 2013.

The proposed emergency regulations will not result in either costs or savings 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 to the State.

#### DOCUMENTS RELIED UPON

To calculate potential cost impacts on businesses and individuals, the Department used information provided by the Bureau of Labor Statistics, in a report entitled “County Employment and Wages in California – Fourth Quarter 2012”. This document is identified in the STD 399 Economic and Fiscal Impact Narrative and can be found here:

<http://www.bls.gov/ro9/qcewca.pdf>