

## Certification Requirements Emergency Regulations

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, Sections 2010, 2012, 2015, 2030, 2040, 2045, 2405 and 2505

### **Attachment 1**

#### **STD. 399 ECONOMIC AND FISCAL IMPACT STATEMENT NARRATIVE**

##### **I. Introduction**

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.

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.

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. 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 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, require that applicants for certification “meet all other qualification requirements prescribed by the Department”. As a result, applicants will be asked to demonstrate, through a “Readiness Plan” included in the certification application, their readiness to operate a recycling center or processing facility . Once certified, the operator of a recycling center or processing facility will be asked to state that have obtained all necessary local permits and licenses that are required to legally operate on the site.

## **II. Summary of Proposed Regulations Revisions**

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

**§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.

### **III. STD 399 Economic Impact Statement – Line Item Detail**

#### Part A. ESTIMATED PRIVATE SECTOR COST IMPACTS

##### Part A.1. Groups Impacted, Requirements/Standards Imposed

- Businesses and/or employees -

Renewal applicants who are operators of certified recycling centers or processing facilities

- Small Businesses -

Renewal applicants who are operators of certified recycling centers or processing facilities (see criteria used to identify small business in Part A.2.)

- Individuals -

New applicants who are applying to be certified as a recycling center or processing facility operator

##### Part A.2. Number/Types of Businesses Impacted

The types of businesses impacted will be recycling centers and processing facilities that are mandated by the new statutory requirements to complete the precertification training and examination. The number of businesses impacted is an estimated 1,138 which is the total number of operators of recycling centers and processing facilities currently certified by the Department.

New applicants and renewal applicants must successfully complete the precertification requirements in order to apply for certification. Applicants who complete the training and exam will be issued a voucher which will be valid for five (5) years once certified. Operators of recycling centers and processing facilities who seek to renew multiple sites will not need to meet this requirement for all of their locations. Only one person is required from each entity to represent the organization and meet the precertification requirements.

An estimated 227 businesses, defined as the average annual number of existing operators of certified recycling centers and processing facilities which are due for renewal, will be impacted by these regulations on an annual basis. In addition, an estimated 208

individuals, defined as the average annual number of new applicants applying for certification, will also be impacted by these regulations on an annual basis. Thus the total annual number of individuals impacted by these regulations amounts to 435. In this context, the words “business”, “operator”, and “applicant” mean the same as an individual.

The annual average number of operators due for renewal, shown in Table 1, is based on the number of currently certified operators and the year their certifications are due for renewal. The annual average for new applicants, shown in Table 2, is based on the historical numbers of new applicants over last four years.

Table 1: Annual Average Number of Operators Due for Renewal

Year	Estimated* Number of Operators Due for Renewal
2014	188
2015	235
2016	217
2017	262
2018	233
Average	227

\* This is the total number that currently will be due for renewal, however, some operators may cease business and not renew.

Table 2: Annual Average Number of New Applicants

Year	Estimated Number of New Applicants
2010	158
2011	199
2012	227
2013 Est.	246
Average	208

An estimated 41% of the total number of businesses impacted will be small businesses. Small businesses were determined to be businesses that were independently owned and operated, not dominant in the field of recycling, not a corporation, not a limited liability company, not a partnership, and the owner owned fewer than 5 certified recycling centers or processing facilities.

### Part A.3. Number of Businesses Created/Eliminated

CalRecycle does not anticipate any measurable loss in businesses created or eliminated by these regulations. The number of businesses fluctuates with the economy, an operator’s

ability to successfully operate a business, local permitting costs, and equipment costs. For every recycler that leaves the business there is a new one ready to take its place.

New applicants and renewal applicants may take the precertification training and examination up to three times in a twelve month period in order to meet the precertification requirements. Applicants have six (6) months to complete the precertification requirements and submit their application for approval. If an applicant fails to meet these requirements for certification, another applicant who succeeds in meeting the requirements will have the opportunity to certify as a recycling center or processing facility.

These regulations will not result in a loss of business or change the number of recycling centers and processing facilities already created.

#### Part A.4. Geographic Extent of Impacts

The geographic impact of the proposed regulations is statewide.

#### Part A.5. Number of Jobs Created/Eliminated

CalRecycle does not regulate or the track number of employees for each operator. The number of certified recycling centers and processors fluctuates with the economy, market trends, the ability of an operator to successfully run a business, city and county regulations and permitting processes, and geographic location. Many of the operators have other business interests such as scrap yards and convenience stores. CalRecycle does not collect this data. The precertification training an examination for applicants and the renewal training and examination for current operators should not have any impact on the number of employees they retain.

#### Part A.6. Impact of California Businesses to Compete with Other States

There is no competitive impact. The demographic targeted for the training and examination includes persons interested in becoming a State certified recycling center and current certified recycling centers and processing facilities. Businesses outside of the State of California do not pay California refund value. Consumers take their used beverage containers to the recycling center for redemption. The recycling center sells the material to a processing facility and the processor exports the material from the State or sells it to an end user. There is no competition from other states.

### Part B. ESTIMATED COSTS

#### Part B.1. Statewide Dollar Costs that Businesses/Individuals May Incur

The training is conducted for prospective applicants and current operators. Prospective operators would need to complete training and pass an examination prior to submitting an

application for certification within the Beverage Container Recycling program. Current operators will be required to complete the training and pass the examination prior to renewing their certificate every five (5) years. Costs to the businesses would be minimal for traveling to a training class and examination. The proposed model would provide training and examination for most trainees within two (2) hours of their business.

The Department proposes to hold the training and examination at least monthly in both Northern and Southern California locations. The time period for completion of the precertification requirements is six (6) months, giving potential participants in the training and exam the opportunity to choose the location of the training and exam that is the most economical.

While the businesses applying for certification renewal are expected to benefit from the training to become more successful in operating their business, it is possible that individuals who are new applicants may not be paid by their current employer to attend training. The time loss for an individual or company would be a day at the maximum, including travel time. The training and exam is not expected to take a full day and would only be required once every five (5) years. There is no fee charged to participants to take the precertification training and exam, nor is there a fee to apply for certification.

The Bureau of Labor Statistics (<http://www.bls.gov/ro9/qcewca.pdf>) provides the average weekly wage of \$1,186 in the fourth quarter of 2012 which would amount to \$237 each day for a five day work week. At \$29 an hour, this is a high estimate for the type of work that would be performed in a recycling center or processing facility. This estimate would include the company's costs for labor, benefits and overhead which would cover travels costs incurred by the company or individual.

The cost for an individual /business would be \$237. The cost for each operator/owner is once every five years which would cover multiple recycling centers or processing facilities for those who own more than one facility.

Initially, all renewal applicants will need to take the precertification training and exam to obtain a 5-year voucher. They will not need to meet these requirements for subsequent renewals until the voucher expires. On an annual basis, the \$237 dollars would amount to \$47 for each operator.

#### Part B.2. Multiple Industry Costs: Share of Total Cost by Industry

The multiple industry costs to industry would be minimal and would consist only of travel cost to the training and examination location for each prospective applicant and existing operators. As outlined in Part A.2., the estimated number of renewal applicants yearly is 227 and for new applicants it is 208, for a total of 435. For 435 individuals/businesses

annually, at \$237 per individual/business, the labor cost would be a total of \$103,095 annually.

Using this estimated annual cost, the cost for the first 24 months will be \$206,190 and a total of \$515,475 over five (5) years.

The proposed emergency regulations may be in effect for a maximum of two years until the permanent regulations are in place.

### Part B.3. Annual Typical Business Cost if Regulation Imposes Reporting Requirements

The proposed regulation would not impose additional reporting requirements.

### Part B.4 Direct Housing Cost Impact: Cost/Housing Unit, Number of Units

The proposed regulations would not impact housing or housing costs.

### Part B.5 Comparable Federal Regulations: State Regulation Need: Added Costs to Businesses/Individuals

No federal regulations are comparable to the proposed regulations. State regulations are needed to implement statutory changes to the Public Resources Code (Sections 14538 and 14539 of in the California Beverage Container Recycling and Litter Reduction Act, Division 12.1)

## Part C. ESTIMATED BENEFITS

### Part C.1. Benefits Summary/Who will Benefit

Recyclers, processors, the Program, and consumers who redeem their CRV containers will benefit from trained and knowledgeable operators. The new precertification requirements will produce concentrated, accessible, relevant, simplified and routine training opportunities that will result in increased program knowledge, proficient certification applicants and participants, reduced errors and increased program integrity.

The precertification training will prepare prospective operators for meeting the program requirements, best industry practices, and the elements needed to be a successful recycler or processor. Training will consist of:

- Starting a recycling business; start-up costs, equipment requirements, and time commitment to operating a successful business;
- Signage, operating hours, and reporting requirements;
- Eligible CRV containers ;
- The significance of the CRV message label,

- The importance of keeping proper receipts and logs of material accepted and redeemed;
- How containers are cancelled and what cancelled material looks like,
- The significance and implementation of daily load limits;
- How the Department will monitor participant program compliance and the significance of limited compliance reviews;
- The consequences of non-compliance;
- Resources available to the program participant to help them succeed;
- What a business plan should consider;
- The significance of location to a recycling business; and
- Industry “best practices”.

Better preparing recyclers for successful participation in the Program and providing ongoing technical assistance to those recyclers will reduce the potential and incentives for errors, fraud, and other activities which compromise Program integrity.

The regulations will provide benefits to both the recycling industry and the Department. Industry benefits by having better informed recyclers and processors, and the precertification process could also reduce the number of applications submitted by persons who do not have the resources or business knowledge to run a successful business. The Department benefits through a more stringent certification process which will improve program integrity by reducing the incentives for fraud and other abuse.

#### Part C.2. Benefits Are The Result of Specific Statutory Requirement, or Agency Goals Based on Broad Statutory Authority?

The precertification training and examination is mandated by statute as a result of the newly enacted SB 96.

#### Part C.3. Statewide Dollar Benefits From This Regulation Over Its Lifetime

The State of California has an over-arching interest in preventing fraud in government programs. In particular, State agencies have adopted preventive strategies rather than the “pay and chase” methods of old. State agencies such as CalRecycle also have an obligation to ensure that program participants are aware of the Program’s requirements and goals and can be successful in their participation. This proposal supports that interest and those obligations by improving program integrity, ensuring that recyclers can be successful and avoid violating the law, and otherwise decreasing the risk of fraud and other losses in the Program.

#### Part D. ALTERNATIVES TO THE REGULATION

Chapter 357, Statutes of 2013 (SB96), requires that on and after January 1, 2014, an applicant for certification as a recycling center or processor, or for renewal of a certification, must complete a precertification training program and meet all other qualification requirements prescribed by the Department. The Department is authorized by SB 96 to require the applicant to obtain a passing score on an examination administered by the department.

#### Part D.1. Alternatives Considered/If None, Explanation

Chapter 357, Statutes of 2013 (SB96), mandates that the Department conduct the precertification training and authorizes it to require new and renewal certification applicants to meet all other qualification requirements prescribed by the Department, including, but not limited to passing an examination.

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.

At present, the Program's minimum requirement for participation (i.e., for certification) is extremely low and does not require either a vested interest or demonstrated industry knowledge on the part of 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.

Another potential method of delivering the training would be through workshops, but this has not been an effective tool to in the past and would be costly for operators and new applicants to travel to large venues in limited locations. To survey all alternatives specific to these emergency regulations, the Department conducted two workshops on October

24, 2013 and October 29, 2013 to solicit input from industry stakeholders. Comments from participants were considered before developing these emergency regulations.

Part D.2. Summarize The Total Statewide Costs And Benefits From This Regulation And Each Alternative Considered

The only costs incurred in this emergency regulation are the costs to CalRecycle which have been appropriated by AB 110, Budget Act of 2013, Chapter 20, Statutes of 2013.

Part D.3. Quantification Issues Relevant to Comparison of Statewide Dollar Costs/Benefits of This Regulation & Each Alternative Considered

Not applicable.

Part D.4. Consideration of Performance Standards to Lower Compliance Costs.

While the precertification training and examination is required by statute, the regulations offer applicants six (6) months and various locations monthly to alleviate any potential costs to meet these requirements. Classes in both Northern California and Southern California will be offered in multiple locations that will meet the anticipated needs of applicants. In addition, modified versions of the training and exam are planned for the long term to offer additional options.

Part E. MAJOR REGULATIONS

The estimated cost impact of these emergency regulations is well below the \$10 million threshold for major regulations. As discussed in Part B.2., the estimated annual cost to businesses and individuals is \$103,095 as shown in Figure 1.

**Figure 1.**

227	Average number of renewal applicants in a year
208	Average number of new applicants in a year
<hr/>	
<b>435</b>	<b>Total number of applicants requiring training annually</b>
\$237	Estimated daily labor cost attending training instead of a day of work
X	
435	Average Total number of applicants annually
<hr/>	
<b>\$103,095</b>	<b>Annual cost to businesses and individuals</b>

**IV. STD 399 Fiscal Impact Statement – Line Item Detail**

Part A. FISCAL EFFECT ON LOCAL GOVERNMENT

There will be no fiscal impact on local government.

Part B. FISCAL EFFECT ON STATE GOVERNMENT

Fiscal Impact on State Government will be limited to the costs incurred by the Department of Resources Recycling and Recovery for staff, equipment and travel. Those costs were appropriated by AB 110, Budget Act of 2013, Chapter 20, Statutes of 2013. There will be no fiscal impact on other State agencies or programs. The estimated fiscal effect on state government for the current fiscal year is shown in Table 3 below:

Table 3: Estimated Fiscal Impact on State Government in Current Fiscal Year

Dept. of Resources Recycling and Recovery	
Personal Services (7 PY)	\$644,000
Operating Expenses and Equipment	\$132,000
Consulting and Professional Services	\$85,000
subtotal	\$861,000
Other Departments	
Subtotal	\$0
Total Fiscal Effect on State Government	\$861,000

Part C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

There will be no fiscal impact on any federally funded State agency or program.