

Economic and Fiscal Impact Statement (STD. 399, Rev. 12/2008) Narrative:

I. Economic Impact Statement

Note to Reader: This document is intended to be used as a narrative reference to the responses and information listed on the STD 399 form

A. Estimated Private Sector Cost Impacts

2. ***Total number of businesses impacted.*** As of May 2012, there were 1,042 certified recycling center operators. They operate 2,307 certified recycling centers.

Describe the types of business. Only certified recycling centers will be affected. The overwhelming majority of certified recycling center operators are private sector companies engaged in the waste or scrap industry. The applicable classification for certified recycling center operators is NAICS 423930 "Recyclable material merchant wholesalers."

The number or percentage of total business impacted that are small businesses. The Department identifies 1,030 of the 1,042 certified recycling center operators as small businesses. The basis used by the Department for identify small businesses using available data are:

- *Not dominant in field of operation.* The Department identified certified recycling center operators with 10 or fewer certified recycling centers as the criteria.
- *Principle office located in California.*
- *Annual receipts of \$4.5 million or less.* The Department identified certified recycling center operators with \$4.5 million of Non-CRV value based on consumer transactions.

The Department based these criteria upon the eligibility requirements for Small Business certification published by the Department of General Services:

- Be independently owned and operated.
- Not dominant in field of operation.
- Principle office located in California.
- Owners domiciled in California.
- Including affiliates, be either; a business with 100 or fewer employees, or average annual gross receipts of \$14 million or less, over the past three tax years.

The Department is unable to accurately estimate/identify the number of employees associated with certified recycling center operators.

A large percentage of the certified recycling center operators are also engaged in waste and scrap business activity that have revenues equal to or greater than the revenue produced by their certified recycling center transactions.

The Department divided \$14 million by 3 years to derive approximately \$4.5 million of annual revenue as a criterion.

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5. Total number of jobs created or eliminated.

- a. The number of jobs created or eliminated is assumed to be zero by the Department. The Department assumes potential impacts on the volume of CRV UBC material redeemed will be offset by an increase in the number of consumer transactions. The Department assumes implementation of the proposed regulation modifications should result in individual consumer transactions currently greater than 1,000 lbs. for glass and 100 lbs. for the remaining CRV UBC material types will be divided into multiple smaller consumer transactions that fall within the regulations and qualifying the consumer transactions for CRV payments.
- b. The Department estimates the elimination of approximately 0.04 full time employee positions per certified recycling center. While the Department does estimate a potential impact on 89 full time employees (FTE) statewide, when distributed across all 2,307 certified recycling centers, this would result in the elimination of a mere 0.04 FTE per certified recycling center. As a practical matter, this will not result in the elimination of any actual positions. Of the 1,042 certified recycling center operators 781 operate a single certified recycling center. These certified recycling centers likely have the owner operator working at the facility and performing consumer transaction without any employees (jobs) to be impacted.
- c. The Jobs or occupations impacted are likely to be staff receiving CRV UBC material for redemption and documenting the consumer transaction.

The jobs impacts were estimated/calculated using data points from the CRI study “Understanding the Domestic Jobs Impacts from Different Methods of Recycling Beverage containers in Part 2 (pages 23-28), specifically page 25 “Collection: Container deposit-return (CDR)”. The report identified three categories with impacts on Full Time Employment (FTE) associated with CDR processes. The values identified in the CRI study and used in this analysis are:

- 6.71 jobs for collection of UBC materials, and
- 0.28 jobs for administration, management and maintenance, and
- 0.35 jobs for Transportation.
- This yielded a combined value of 7.34 jobs per 1,000 tons of UBCs collected for this stage of the CDR system’s container life cycle.

The Department estimates approximately 243 million pounds of CRV UBC material redemption weight as the population of potentially affected consumer transactions impacted by implementation of proposed regulation modifications. (See Table 11, Page 22 of the Economic Impact Analysis / Assessment)

- As stated earlier, the Department assumes a potential loss of 10% in consumer transactions, which would account for 24,300,000 lbs. of CRV UBC material (243,000,000 lbs. x 10%).
- The 24,300,000 lbs. represents 12,150 tons of CRV UBC material (24,300,000 lbs. / 2,000 lbs.).
- Applying the CRI study ratio of 7.34 jobs per 1,000 tons CDR material would result in a potential impact to approximately 89 FTEs due to a potential reduction in material volumes. (12,150 tons / 1,000 = 12.15) (12.15 x 7.34 = 89.181)

B. Estimated Costs

1. Statewide Dollar cost for Business

- d. Describe other economic costs that may occur:

There is a potential economic impact to consumers of \$8,514,200 if they choose to not redeem eligible CRV UBC material due to implementation of proposed reductions in the allowable daily load limits. These figures are discussed in detail in the document “Economic Impact Analysis/Assessment” that is a part of this rulemaking package.

There is a potential economic impact to certified recycling center operators for \$3,669,800 if consumers choose to not redeem eligible CRV UBC material due to implementation of proposed reductions in the allowable daily load limits. These figures are discussed in detail in the document “Economic Impact Analysis/Assessment” that is a part of this rulemaking package.

5. Are there comparable Federal Regulations?

- b. There are no comparable Federal regulations.

The proposed regulation changes are specific to the CBCRP. The CBCRP is a state mandated program and does not have any operating and or compliance elements that fall under Federal statute and or guidelines. CRV UBC material redeemed in California for CRV is a process that is unique to California.

C. Estimated Benefits

1. Briefly summarize benefits resulting from this regulation and who will benefit

Direct Benefit (measurable):

The proposed regulations to reduce the daily allowable load limits, if implemented, will remove a reporting requirement mandated by the current regulations. Current regulations require that all aluminum transactions more than 250 pounds be documented and the data be transmitted to the Department on at least a weekly basis (14CCR Section 2530(i)). The Department received 24,500 individual two hundred fifty pound reports from certified recycling center operators in calendar year 2011. The Department expects program participants to reduce their administrative costs with the removal of this reporting requirement. There is no additional programming, record keeping, reporting or other paperwork cost to California businesses impacted by the adoption of the regulation changes.

The Department estimates approximately 4,083 hours of work will be eliminated. This is approximately 2 full time positions, with an equivalent value of approximately \$90,000 in payroll savings assuming an average of \$45,000 per position annually. This is an estimate of the cost currently associated with the support required for compliance with 14CCR Section 2530(i).

This benefit will be shared by certified recycling center operators and the Department. The Department will realize the majority of this benefit compared to any other single entity.

The process for compliance with 14CCR Section 2530(i) reporting requires certified recycling center operators to identify aluminum consumer transaction over 250 lbs. in their transaction records, duplicate the information, and transmit (fax or mail) the documentation to the Department. The Department receives the documents and enters them into a reporting system, the transmitted documentation is then filed and archived.

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Conservatively, assuming a total of 10 minutes per transaction record for the entire process results in 4,083 hours spent managing these reports annually (24,500 reports x 10 minutes = 245,000 minutes / 60 minutes = 4,083.3 hours). At 2,000 hours for a full time position annually this equates to approximately 2 full time positions between the certified recycling center operators and the Department.

Indirect Benefit (immeasurable):

The intent and purpose of the proposed regulations to reduce the daily load limits is to protect the public interest concerning approximately \$850 million dollars of CRV payments each year. Illegal redemption of out of state UBC material for illegitimate payments of CRV is conservatively estimated at approximately \$7 million dollars annually. (See background section in Cost Estimating Methodology.) Reducing consumer load limits is one of multiple strategies being used as part of a larger plan to address abuse and fraud of CRV payments associated with consumer transactions.

2. Are the benefits the results of...

Goals developed by the Agency based on broad statutory authority? Yes

Explain. The California Beverage Container Recycling and Litter Reduction Act establishes broad statutory authority for the Department to adopt regulations "...which the department determines may be necessary or useful to carry out this division or any of the department's duties or responsibilities imposed pursuant to this division." Public Resources Code Section 14530.5(b).

D. Alternative to the Regulation

1. List Alternative considered and describe below

Alternatives:

The Department has demonstrated the current daily load limits for consumers redeeming CRV UBC material as are too high. The Department is unable to identify any legitimate need for consumers to regularly recycle loads as large as those allowed by the current daily limits. Nor is the Department able to identify how consumers will be unduly denied redemption opportunities due to lower daily load limits. See Table 5, Page 17 of the Economic Impact Analysis / Assessment.

Any alternatives that do not lower the daily load limits for consumers redeeming CRV UBC material will leave the current unreasonably high load limits in place thus maintaining what has proven to be an irresistible incentive for abuse and fraud. The Department believes that leaving the current daily load limits in place would render any alternatives ineffective at reducing fraud.

The proposed modification to existing regulations defining the daily load limits are technical in nature and are intended to reduce the excessive risk of loss to the Fund associated with abuse and fraud facilitated by the excessively high daily load limits currently established by regulation. The proposed modifications are intended to correct flaws in existing regulations, and as such, the Department is unable to identify a reasonable alternative. The Department believes adoption and implementation of the proposed modifications to the existing regulations provides the most reasonable, least burdensome, and most cost-effective approach to achieve the purposes of the existing regulations in a manner that ensures full compliance with the law being implemented.

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The proposed modifications to allowable daily load limits are intended to correct flaws in existing regulations, and as such, the Department is unable to identify a reasonable alternative. The Department believes correcting the flawed regulations is the only possible action for achieving the purposes sought for needs/issues 1, 2, and 3 outlined below.

The Department believes adoption and implementation of the proposed modifications to the existing regulations for daily load limits for consumers redeeming CRV UBC material at certified recycling centers is the only reasonable approach to achieving the purposes sought.

The Department believes adoption and implementation of the proposed modifications to the existing regulations for daily load limits is the least burdensome and most cost-effective approach in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented.

The Department is concurrently engaged in several efforts addressing the needs/issues outlined above that are meant to integrate with the proposed regulation changes for lowering the current daily load limits for consumers redeeming CRV.

- The Department has an interagency agreement with California Department of Food and Agriculture to monitor the importation of out of state UBC material. This interagency agreement began in Fiscal Year 2012-2013.
- The Department is developing regulations for implementation of Public Resources Code 14596(a) associated with reporting and inspecting UBC materials imported into CA from out-of-state.

The Department believes adoption and implementation of the proposed regulations amending the current daily load limits for consumer redemption of UBC material for CRV addresses three specific issues (listed in descending order of magnitude):

1) Illegal redemption of out of state UBC material imported into California.

Large loads of imported UBC material are broken down into multiple smaller loads to circumvent the current daily load limits for consumer redemption of UBC material for CRV. The smaller loads of illegal UBC materials are redeemed for CRV at certified recycling centers by parties representing themselves as consumers.

Current daily load limits allow an individual consumer to redeem 2,500 lbs. of glass and 500 lbs. of Aluminum, PET, HDPE, Bi-Metal, and Plastic #3 through #7 per certified recycling center each day. Under the current regulations, an individual working 5 days a week, for 50 weeks per year could receive illegal CRV payments for the following amounts every year:

- \$192,250 of Aluminum (3,587,500 containers, 125,000 lbs.)
- \$125,000 of PET (1,962,500 containers, 125,000 lbs.)
- \$65,750 of Glass (1,162,500 containers, 625,000 lbs.)
- \$71,250 of HDPE (850,000 containers, 125,000 lbs.)

Total annual CRV value for these four CRV UBC materials combined is \$454,250 which is equivalent to 6,713,350 containers or approximately 1,000,000 lbs.

The current large daily load limits provide an efficient means commit fraud by illegally redeeming large volumes of out-of-state UBC material for CRV. This is a primary factor currently exposing the Fund to loss from fraud.

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The current large daily load limits provide an excessive economic incentive to engage in the illegal redemption of out-of-state UBC materials at certified recycling centers by parties representing themselves as consumers.

It is important to note that when consumer load limits were originally defined in regulation the CRV per container was 50% less than it is today. Effective March 1, 1992, the CRV per container was 2.5¢ for containers less than 24oz and 5¢ for containers equal to or greater than 24oz. Since January 1, 2007, the CRV per container is 5¢ for containers less than 24oz and 10¢ for containers equal to or greater than 24oz.

As a result of increases in the CRV per container, the Fund has expanded from approximately \$400 million to approximately \$800 million dollars annually for CRV payments to consumers redeeming UBC materials.

The primary CBCRP impact of illegal redemption of out-of-state UBC materials is the theft of California consumers' money (CRV) from the Fund, because no CRV is paid into the Fund for the out-of-state UBC material being redeemed illegally for CRV. Current daily load limits provide illegal enterprises with an easy way to process large quantities of out-of-state UBCs at certified recycling centers on a daily basis. Secondly, this activity is a significant threat to the fiscal stability of the Fund by putting unnecessary strain upon the solvency of the Fund.

An additional impact on the CBCRP is the corruption of legitimate markets, where honest certified recycling center operators are disadvantaged due to unfair competition supported by illegal CRV payments for out of state UBC materials. Current daily load limits provide for large volumes of out-of-state UBC material to be processed through a single certified recycling center by a single individual consumer creating an economic incentive for the certified recycling center operator to facilitate or become an active participant defrauding the Fund.

In terms of the illegal redemption of out of state UBC material imported into California, the purposes for the proposed modification to existing regulations lowering daily load limits are to:

- Protect the public interest by reducing the efficiencies and profitability associated with the illegal redemption of out of state UBC materials for CRV by increasing the operating overhead, lowering the profit margin, and reducing the volume, and increasing the documentation foot print associated with illegal activities;
- Protect the fiscal stability of the Fund by reducing CRV payments for out-of-state UBC materials;
- Reduce the concentration of illegal redemption of out-of-state UBC material at a single certified recycling center and thereby reducing the economic incentive for certified recycling center operators to become complicit in defrauding the Fund.
- Reduce corruption of legitimate markets, where honest certified recycling center operators suffer due to unfair competition supported by illegal CRV payments for out-of-state UBC materials;
- Minimize negative impacts on legitimate consumers' redemption of CRV UBC materials; and
- Minimize negative impacts on certified recycling center operators' ability to maintain legitimate volumes of CRV empty beverage containers from consumer redemption.

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2) *Redemption of curbside program empty beverage containers illegally scavenged by individuals and organized enterprises.*

Illegally scavenged empty beverage containers are redeemed for CRV at certified recycling centers by parties pretending to be consumers. Organized enterprises break large loads of illegally scavenged material into multiple smaller loads to circumvent current daily load limits for consumer redemption of empty beverage containers for CRV.

The primary CBCRP impact from illegal scavenging, and subsequent CRV redemption of UBC materials is the corruption of legitimate markets by depriving registered curbside operators and local agencies of legitimate revenues. Current daily load limits allow large volumes of illegally scavenged UBC material to be processed through a single certified recycling center by a single individual consumer creating an economic incentive for the certified recycling center operator to facilitate or become an active participant defrauding the Fund.

The large current daily load limits provide an efficient means to convert illegally scavenged UBC material into CRV. Because CRV was presumably paid into the Fund for UBCs placed in curbside recycling bins this does not pose the same threat of significant losses to the Fund due to fraud as does the illegal importation and redemption of out-of-state UBC material described in issue #1. It does, however, reduce the profitability of legitimate operators of curbside programs, who play a critical role in the continuing success of the CBCRP.

In terms of the redemption of curbside program material illegally scavenged by individuals and organized enterprises, the purposes for the proposed modification to existing regulations lowering daily load limits are to:

- Protect local agencies and registered curbside program operators UBC material supply by reducing the efficiencies and profitability associated with redeeming illegally scavenged curbside UBC materials, thereby increasing the operating overhead, reducing the volume, and increasing the documentation foot print for individuals and enterprises engaged in CRV redemption of illegally scavenged curbside UBC materials.
- Minimize negative impacts on legitimate consumer's ability to redeem CRV UBC materials.
- Minimize negative impacts on certified recycling center operators' ability to maintain legitimate volumes of CRV UBC materials from consumer redemption.

3) *Large quantities of non-CRV UBC materials are included in CRV payments for large consumer loads.*

Under current regulations, certified recycling center operators are required to visually inspect loads of UBC materials presented for redemption by consumers to determine the proper basis for calculating the CRV payment. It can be difficult for certified recycling center staff to perform reasonably thorough inspections of very large loads of UBC materials to determine eligibility for CRV. Thorough inspection by certified recycling centers is critical because the inclusion of non-CRV UBC materials in consumer loads negatively impacts the CBCRP and poses an additional threat to the fiscal stability of the Fund.

In terms of large quantities of non-CRV UBC materials being included in CRV payments for large consumer loads, the purposes for the proposed modification to existing regulations lowering daily load limits are to:

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- Protect the fiscal stability of the Fund by reducing the quantities of non-CRV UBC material included in CRV payments for large loads of UBC material presented for redemption by consumers.
- Increase the effectiveness of visual inspections certified recycling center operators perform by reducing the size of large loads. This decreases the opportunity for consumers to hide ineligible materials in a large load from the scrutiny/detection.
- Facilitate certified recycling center operators ability to make accurate determinations of the basis for calculating CRV payments.
- Minimize negative impacts on legitimate consumers' ability to redeem CRV UBC materials.
- Minimize negative impacts on certified recycling center operators' ability to maintain legitimate volumes of CRV UBC materials from consumer redemption.

Performance Standards as an alternative

Were performance standards considered to lower compliance costs. Yes

Explain. The proposed regulations to reduce the daily allowable load limits prescribes the specific action to deny payment of CRV for consumer transactions greater than 1,000 lbs. of glass or 100 lbs. for the remaining CRV UBC material types. The intent of this prescribed action (mandate) is to prevent illegitimate payments of CRV. The Department was unable to identify an alternative performance standard that could provide the same degree of certainty in protecting the public's interest by deterring illegitimate payments of CRV.

For the purposes of this document, the following definitions apply:

FTE. Full-Time-Employment Equivalent jobs source is the study funded and published by CRI (Container Recycling Institute) titled "Returning to Work", Understanding the domestic Jobs impacts from Different Methods of Recycling Beverage Containers, published date of December 2011.

From the State Administrative Manual, Section 6602 -

For the purposes of implementing these guidelines, the following definitions apply:

Agency, Local. Any city, county, special district, authority, or other political subdivision of the state.

Agency, State. Every office, officer, Department, division, bureau, board, council, or commission in state government. A "state agency" does not include an agency in the judicial or legislative branches of state government.

Costs. All additional expenses for which either supplemental financing or the redirection of existing staff and/or resources (with or without the need for supplemental funding) is required. Costs include those which can be absorbed in an agency's existing budget.

Direct Cost

1. Personnel needed to perform a line function or activity prescribed (expressed or implied) in the regulation.
2. Fringe benefits associated with those personnel, e.g., retirement, OASDI, workers' compensation.
3. Operating expenses associated with those personnel, e.g., if compliance is achieved by contracting with a private vendor.
4. Any additional equipment which will have to be purchased or leased in order to comply with the regulation.

Allocation of other personnel-related costs if not otherwise allocated through an indirect cost system. Some agencies may allocate the costs of rent, space, utilities, etc., directly to the personnel involved.

Indirect Costs. Any costs related to the additional personnel or operating expenses described in the preceding which are not directly allocated or assigned to those personnel. They do not include a pro rata share of the costs of any manager or supervisor above the first line supervisors since it is assumed that any such supervisors would be in place whether or not the personnel hired to comply with the regulations were there. For example, if a regulation necessitated the hiring of additional staff in a county welfare Department, it would not be appropriate to assign, through an indirect cost system, a portion of the costs of the county welfare director to those new personnel since the director would exist to perform his/her functions even if the new personnel were not hired.

Mandate. A requirement with a consequence of noncompliance of either (1) a criminal penalty, (2) a civil liability, or (3) an administrative penalty.

Public Agency. Any state agency, city, county, special district, school district, community college district, county superintendent of schools, or federal agency.

Reasonable Compliance. No universal definition is available. However, the "prudent person" test can be utilized to arrive at an appropriate definition of the term. For example, if an agency is required by regulation to provide transportation for certain persons, it clearly would not be appropriate to purchase limousine-type luxury automobiles to do so. On the other hand, it would not be appropriate to provide the service by purchasing tandem bicycles. Reasonable compliance can be achieved with some mode of transportation between the two extremes cited. The issuing agency must evaluate each instance separately and determine what "reasonable compliance" would be. The estimate developed must clearly indicate the mode or level of activity it has assumed would achieve such compliance.

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Since compliance connotes that the regulation involves a requirement, costs incurred by state or local agencies in exercising any authority granted by a regulation which is permissive or optional are not germane and need not be estimated.

Regulation. Every rule, order, or standard of general application or the amendment, supplement, or revision of any rule, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure

The term "emergency" means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. An emergency regulation is adopted pursuant to Government Code Section 11346.1.

Revenues. Any changes in the amounts of operating income received by state and local agencies as the result of an executive regulation must also be identified. In this context, "revenue" includes taxes, state and/or federal assistance, fees, licenses, and so forth.

Savings. Both actual budget reductions and the "freeing up" of staff and/or resources for reassignment to other areas of legitimate concern of the agency.

School District. Any school district, community college district, or county superintendent of schools.

Special District. Any agency of the state which performs governmental or proprietary functions within limited boundaries. Special district includes a redevelopment agency, a joint powers agency or entity, a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area. Special district does not include a city, a county, a school district, or a community college district.

County free libraries established pursuant to Chapter 6 (commencing with Section 19100) of Part II of the Education Code, areas receiving county fire protection services pursuant to Government Code Section 25643, and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code shall be considered special districts for all purposes of this section.

From Public Resources Code Sections 14500, et seq. -

Dealer. 14510. "Dealer" means a retail establishment which offers the sale of beverages in beverage containers to consumers. However, any lodging, eating, or drinking establishment, or soft drink vending machine operator who engages in the sale of beverages in beverage containers to consumers shall not be deemed a dealer for the purposes of this division, except that these sales are subject to Section 14560. To determine which retail establishments are dealers, the Department shall use annual or more frequent updates provided by American Business Information, Inc., as long as the information provided by American Business Information, Inc., is updated at least annually.

Consumer. 14508. "Consumer" means every person who, for his or her use or consumption, purchases a beverage in a beverage container from a dealer. "Consumer" includes, but is not limited to, a lodging, eating, or drinking establishment, and soft drink vending machines.

Fund. 14512.7. "Fund" means the California Beverage Container Recycling Fund established pursuant to subdivision (a) of Section 14580.

Recycling Center. 14520. "Recycling center" means an operation which is certified by the Department and which accepts from consumers, and pays or provides the refund value pursuant to Section 14572 for, empty beverage containers intended to be recycled.

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Redeem. 14522.5. “Redemption” and “redeem” means the return to a recycling center or location of an empty beverage container for a refund of at least the refund value.

Refund Value. 14524. “Refund value” means the amount established for each type of beverage container pursuant to Section 14560 that is paid by the following: (a) A certified recycling center to the consumer or dropoff or collection center for each beverage container redeemed by the consumer or dropoff or collection center. With respect to consumers returning containers to recycling centers, the refund value shall not be subject to tax under the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) or the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

Consumer. 14508. “Consumer” means every person who, for his or her use or consumption, purchases a beverage in a beverage container from a dealer. “Consumer” includes, but is not limited to, a lodging, eating, or drinking establishment, and soft drink vending machines.