

Summary of proposed modifications for the 15-Day Renote

Department of Resources Recycling and Recovery, Division of Recycling Beverage Manufacturer and Distributor Forms and Registration Proposed Regulations January 23, 2012

This Summary is made available to provide additional information regarding the considerations given for the revision or retention of the text for the proposed regulations.

Section 2000(a)(47.25) – Definitions

The definition of “transfer” shall remain in the proposed regulations to clarify the payment responsibilities for participants in the Beverage Container Recycling Program (Program). The applied interpretation of statute pertaining to the responsibilities of beverage manufacturers and distributors extends to transfers to consumers as described in Sections 2245 and 2320 of the California Code of Regulations (CCR). Since transfers do not require the sale of beverages, donations of beverage containers are subject to processing fees and CRV. The charitable organization or recipient of the donated item serves as the consumer with or without a monetary transaction in the same manner that restaurants are regarded as consumers for the purposes of the Program.

There is a reasonable need for this interpretation of statute as donated beverage containers enter the recycling stream of California regardless of any monetary transaction prior to the end use/disposal of the material. The manufacturers and distributors are responsible for the beverage containers they introduce into the state of California. When these products are recycled, they would present a financial burden to the Program should they be redeemed for CRV without the commensurate CRV contribution from the distributor for the cost. In addition, depending on the material type, those containers may draw from the processing payment fund without a corresponding processing fee supplement from the beverage manufacturer to help balance the fund.

Transferred beverage containers do not create an additional reporting burden for beverage manufacturers and distributors as they do not require separate reporting forms but are simply included in a registered company’s regular reporting and payment schedule. Beverage containers transferred would not present a delay in a company’s ability to donate beverages for emergency response as the beverage containers are reported in the normal reporting period after the fact, not before or during the actual transaction.

Section 2200 - Labeling

Section 14561 in the Act mandates the labeling of beverage containers in the Program and is subject to enforcement as set forth in Sections 14591 and 14591.1. The Department implements Section 14561 through the review and approval of product labels to determine if they carry the CRV message and meet labeling standards as specified in Section 2200 of the CCR.

Section 14560 establishes the redemption payment responsibility of distributors for beverage containers sold in this state. Beverages in the Program are described in Section 14504. The review and approval of beverage container labels prior to the sale of beverage containers, supports these statutory requirements by assuring that beverage containers that are in the Program display the CRV message and distributors of those products are deemed to be responsible for paying the appropriate redemption payments into the Program.

The Department routinely finds product labels for beverages in the Program that do not carry the CRV message or do not meet the labeling standards set forth in Section 14561 of the Act and Section 2200 of the CCR. Non-compliant beverage containers found on retail shelves and at recycling centers illustrate the need for the Department to review products for compliance.

The 30-day timeline has been deleted. At any time prior to selling or distributing beverage products, companies should submit their labels for approval prior to or at the time of registration. Companies are responsible for labeling and paying CRV for all beverage products sold in California that are subject to the Act. It would be in the best interest of the companies involved to anticipate this responsibility and submit their labels allowing for their marketing timelines. Companies already registered in the Program may choose to submit their labels for review. The Department may request companies to provide any product samples at any time for review and approval. The language in the proposed regulations has been amended to reflect these revised requirements.

Section 2230 Manufacturer Applicability

Section 2230(c)

The timeline for providing the Department with the agreement for an entity to pay on the beverage manufacturer's behalf has been extended from 10 working days to 20 working days to provide consistent deadlines with the extended timelines proposed in the distributor Applicability Section 2300(b). The timeline for informing the Department of any changes to agreements to pay on behalf has been extended from 10 working days to 20 working days to allow companies more time to contact the Department yet allow the Department enough time to make corrections for reporting and payment cycles.

Section 2230(e)

The timeline for informing the Department of any changes to information provided at the time of registration has been extended from 10 working days to 20 working days to allow companies more time to contact the Department yet allow the Department enough time to make corrections for reporting and payment cycles. Since registration is the initial contact and a requirement to update information is an ongoing responsibility, this requirement to update information, originally proposed in Section 2231, has been more appropriately placed in this section.

It is necessary to inform the Department of changes because this provides the Department with accurate information to determine if reporting and payment responsibilities are assigned to the correct party, or based on updated information, to assign the responsibility for reporting and payments to another company. This also provides the Department with current contact information for participants in the Program.

Section 2231 and 2301- Registration

2231(b)(6) and 2301(b)(5)

Requiring business addresses for “California warehouses, sales offices, corporate offices or other” is necessary for the Department to determine if there is a California presence for an entity and establish the responsible party for beverage container transactions. This allows the Division to identify the beverage manufacturer and/or distributor at the time of registration to enable reporting and payments. This language will remain in the proposed regulations.

2231(b)(8) and 2301(b)(7)

The Department will request a company to indicate the type of business ownership structure but will not request copies of ownership documentation at the time of registration. The language for requesting these document copies has been stricken from the proposed regulations.

2231(b)(9) and 2301(b)(8)

The requirement to inform the Department of transfers and the identity of the recipients at the time of registration is necessary to identify the responsible parties for reporting and payment and the start date for those responsibilities. If these entities are already registered, the responsibility of those entities would be to include those transferred products in their normal reporting and payment schedules. This language will remain in the proposed regulations.

2231(b)(14)

It is necessary for the Department to identify whether a co-packer and/or contract bottler is used to establish the parties responsible for processing fees in order to register them as a beverage manufacturer and enable reporting and payments. This language will remain in the proposed regulations.

2231(b)(16) and 2301(b)(15)

It is necessary to request the identification of entities in California to which beverages are sold or transferred, including distributor contact information, during the initial registration. Based on this information the Department can determine the responsible entity for reporting and payments as the beverage manufacturer or the distributor. The distributor cannot be identified or billed without identifying the company and providing contact information. It is also necessary to update the Department if this information changes which may result in a change in the entity responsible for payments as the beverage manufacturer or the distributor. This language will remain in the proposed regulations.

2231(c) and 2301(c)

The timeline for informing the Department of any changes to information provided at the time of registration has been extended from 10 working days to 20 working days to allow companies more time to contact the Department yet allow the Department enough time to make corrections for reporting and payment cycles. Since registration is the initial contact and a requirement to update information is an ongoing responsibility, this requirement has been more appropriately placed in the Applicability sections (2230 and 2300).

Section 2300 – Distributor Applicability (2300[b][1-4])

Section 2300(b)

The requirement to provide a copy of the written agreement, if another entity has agreed to pay on behalf of a distributor, has been removed. However, the information needed by the Department to identify the entity responsible for reporting and payments and a statement from each party verifying the transfer of responsibility, must be provided to make it clear to the Department and the companies involved, who is responsible for payments and who is making the payments. The timeline to notify the Division of the initial agreement and any subsequent changes has been extended from 10 working days to 20 working days to allow more time for companies to provide the information yet allow the Department enough time to make corrections for reporting and payment cycles.

Section 2300(d)

The timeline for informing the Department of any changes to information provided at the time of registration has been extended from 10 working days to 20 working days to allow companies more time to contact the Department yet allow the Department enough time to make corrections for reporting and payment cycles. Since registration is the initial contact and a requirement to update information is an ongoing responsibility, this requirement to update information, originally proposed in Section 2301, has been more appropriately placed in this section.

Addendum to 15-Day Renotice

January 23, 2012

It is necessary to inform the Department of changes because this provides the Department with accurate information to determine if reporting and payment responsibilities are assigned to the correct party, or based on updated information, to assign the responsibility for reporting and payments to another company. This also provides the Department with current contact information for participants in the Program.

Section 2310 (a)(1) and 2320(g) – Distributor Reporting and Payments

These sections have been amended to be consistent with statutory language in Section 14550 and 14574 of the Act with regard to the reporting and payment due dates. The text in the regulations will support the current requirements of this section in the Act as well as the changes effective July 1, 2012.