NOTICE OF PROPOSED ACTION

RECYCLING CENTER PERMANENT REGULATIONS

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

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 6, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, regarding the reduction of load limits for plastic and aluminum beverage containers, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 6. RECYCLING CENTERS

Article 3. Accounting and Reporting Requirements

§ 2530. REPORTING

Subsection § 2530 (i): This subsection has been amended to change the list that recycling centers maintain and report of purchases of aluminum beverage containers from 250 pounds to 100 pounds and adds a list of purchases of more than 75 pounds of plastic beverage containers.

§ 2535. PAYMENTS TO CONSUMERS, CURBSIDE PROGRAMS, COMMUNITY SERVICE PROGRAMS AND DROPOFF OR COLLECTION PROGRAMS

Subsection 2535 (f): This subsection has been amended to change the daily load limits for material received from any person, operation or entity for aluminum beverage containers from 500 to 150 pounds and the load limits for plastic beverage containers from 500 to100 pounds.

INFORMATION IS AVAILABLE UPON REQUEST. Copies of the text, the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request and at our website: www.conservation.ca.gov. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 “K” Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Sharon Siozon, at (916) 322-1760. General or substance questions regarding this file may also be directed to Sharon Siozon. The backup agency contact person for this rulemaking file is Karen Denz, who may be

contacted at (916) 322-1899. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS. 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. 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 May 11, 2009. 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. Submit your written comments to: Sharon Siozon, Load Limits Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@consrv.ca.gov, or faxed to (916) 327-8668.

PUBLIC HEARING. A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF MODIFIED TEXT. Following the written comment period, and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with the changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On October 23, 3008, the Department received a petition from a certified recycling center pursuant to Government Code Section 11340.6 requesting that the Department undertake a rulemaking proceeding to amend the current daily consumer load limits for aluminum and plastic beverage containers. The recycling center believes that lowering the daily load limits will help solve a problem recycling centers face identifying out-of-state containers being presented for redemption. The Department has granted the petition for this rulemaking.

Under the existing law, the California Beverage Container Recycling and Litter Reduction Act (Act) encourages recycling of specific beverage containers and the reduction of littered beverage containers in the State. Under this Act, the Department, through the Division, is responsible for administering the Act and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

The current consumer daily limits for the redemption of aluminum and plastic beverage containers at recycling centers is 500 pounds per person per day, which is set in California Code of Regulations Section 2535(f). Certified recycling centers must also report to the Division any loads of aluminum over 250 lbs. that are purchased from consumers, as required in California Code of Regulations Section 2530(i). The Division proposes to reduce the consumer daily limit for the redemption of aluminum beverage containers to 150 pounds and 100 pounds for plastic beverage containers. The Division also proposes to change the reporting requirement weight for transactions of 100 pounds or more for aluminum beverage containers and set the reporting requirement weight to 75 pounds or more for plastic beverage containers.

In investigations of recycling centers, the Division has identified a substantial number of people buying containers from other states to transport them into California and collect California Refund Value (CRV). The problem grew increasingly worse when the redemption value increased in 2007 from four cents to five cents for beverage containers less than twenty-four ounces and from eight cents to ten cents for beverage containers greater than twenty-four ounces. Investigations by the Division and the Department of Justice have revealed that large loads (greater than 5,000 pounds) of aluminum and plastic beverage containers are being transported into California and split into loads of 300-500 pounds. These loads are then taken to recycling centers in vans and pick-up trucks to illegally claim and receive CRV on them. This is fraud and importers have taken drastic measures to avoid being detected, such as performing counter surveillance, using auxiliary roads, coming in late at night and trying to hide the material from view when transporting or storing it. Only beverage containers sold in California are eligible for CRV and the action of these importers is illegal and draining the California recycling fund of millions of dollars each year. It is also a threat to the businesses of honest recyclers who refuse to purchase out-of-state containers.

By cutting the allowable consumer limit from 500 pounds to 150 pounds for aluminum and 100 pounds for plastic beverage containers and requiring the reporting of loads of aluminum over 100 pounds and plastic over 75 pounds, the Division will be able to limit fraudulent activity and monitor it more effectively. It will make it much more difficult for the importers to sell the larger loads of containers and require them to do more work, which is not cost effective for them to do. It will assist recycling centers in properly inspecting loads because the loads will be smaller. Reducing the weight limits for reporting will also make it

easier for the Division to identify recycling centers that are part of fraudulent load splitting through the alteration of receipts and logs.

The lower load limits will also benefit stores in convenience zone centers who pay on vouchers. Dealers are now paying a minimum of $785 for a 500 pound load of aluminum containers, based on the coupons presented to them at the cash registers by people who have recycled at a convenience zone center. This is extremely hard on their cash reserves and causes them cash flow problems. The Division has received complaints from dealers about these large loads and the strain it is causing on their cash reserves. A 150 pound load of aluminum would only command around $236 from the store and take the strain off of their cash reserves.

From data collected by the Division, the typical consumer redeems an average load of 8.7 pounds in aluminum cans and 14.9 pounds for PET plastic. It is truly rare that a consumer will recycle a legitimate load of aluminum that weighs 500 pounds which would amount to 14,800 containers. The average family consumes 235.2 cans per family per month or 95 pounds of aluminum beverage containers per year. 500 pounds of PET Plastic is 7,300 containers. The average household consumption is 128 PET bottles per family per month or 105 pounds of PET bottles per year. The proposed daily limits would allow real consumers to redeem their containers without a problem. This allows the daily limit to be adjusted to a more realistic level that is large enough to allow bona fide California consumers to recycle their California containers and at the same time, act as a deterrent for fraudulent activity.

AUTHORITY

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

REFERENCE

Public Resources Code Sections, 14520, 14538, 14552, 14572, and 14572.5.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations do not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of the statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Costs or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language. These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

Create or eliminate jobs within California;

Create new nor eliminate existing businesses within California;

Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will not affect small businesses. These proposed regulations do not mandate actions upon private persons or businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: www.conservation.ca.gov.