

NOTICE OF PROPOSED ACTION

BEVERAGE MANUFACTURER AND DISTRIBUTOR FORMS AND REGISTRATION PERMANENT REGULATIONS

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

NOTICE IS HEREBY GIVEN that the Department of Resources Recycling and Recovery (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 1, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, regarding beverage manufacturer and distributor forms and registration, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 1. DEFINITIONS

§ 2000. DEFINITIONS.

New Subsection 2000 (a)(47.25): This subsection is added to add the definition of “transfer,” as it relates to the Beverage Container Recycling and Litter Reduction Act (Act), in that “transfer” is referenced in Public Resources Code sections 14523, 14574 (a)(1), 14575 (g)(1), 14575 (g)(3)(B), and 14575 (j)(2), but is not defined as it is related to the Act. The definition will clarify that “transfer” includes, but is not limited to, giving beverage container as a donation, promotional giveaway, or sample item by a distributor or beverage manufacturer.

New Subsection 2000 (a) (47.5): This subsection is added to add the definition of “vegetable juice” as it relates to the Act, in that “vegetable juice” is referenced in Public Resources Code Section 14504 (a)(10), but is not defined as it is related to the Act. The definition will clarify that “vegetable juice” means one hundred percent juice as described in the Code of Federal Regulations Title 21 Section 102.33.

Section 2000 (a) Reference:

Section 14523 is added as it gives the Division authority to require redemption payments from distributors for every beverage container sold or transferred to a dealer.

Section 14575 (g)(1) is added as it gives the Division authority to require the beverage manufacturer to pay processing fees for each beverage container sold or transferred to a distributor or dealer.

Section 14575 (g)(3)(B) is added as it gives the Division authority to require an annual processing fee payment for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year that has a scrap value less than the cost of recycling.

Section 14575 (j)(2) is added as it gives the Division authority to determine the processing fee reduction from each processing fee account using a mathematical estimate of the number of containers sold or transferred to a distributor during the previous calendar year.

A comma has been added after 14575 (a) and before Section 14575 (b); the word “and” has been deleted between Section 14575 (a) and Section 14575 (b); and the word “and” has been added after Section 14575 (g)(3)(B) to allow for correct grammatical sentence structuring with the addition of new authority. These are nonsubstantive amendments.

SUBCHAPTER 3. MANUFACTURERS

Article 1. Labeling

§ 2200. LABELING REQUIRED.

Subsection 2200 (a): This subsection is amended to provide clarity that labeling of nonrefillable beverage containers by the beverage manufacturer is required prior to the offer for sale, sale, or transfer of beverage containers in this state. This amendment will assist both the beverage manufacturer and the Division in meeting statutory and regulatory labeling requirements, and alleviate costly labeling errors.

This subsection is amended to require the beverage manufacturer to provide a sample proposed label to the Division for approval within thirty (30) days prior to labeling the beverage container, if prior approval of the label by the Division has not been obtained. Receiving a sample label in advance of labeling will assist both the Division and the beverage manufacturer in meeting statutory and regulatory labeling requirements, and alleviate costly labeling errors.

Subsection 2200 (a)(1): This subsection is amended to provide clarity that Division approval of the labeling of nonrefillable beverage containers by the beverage manufacturer must be obtained prior to the offer for sale, sale, or transfer of beverage containers in this state. This amendment will assist both the beverage manufacturer and the Division in meeting statutory and regulatory labeling requirements and alleviate costly labeling errors.

Section 2200 Reference:

Section 14504 (c) is amended to Section 14504, as limiting the reference to Section 14504 (c) does not capture the definition of beverage, which is relevant to Section 2200.

Section 14505 is added as it defines beverage containers, the definition of which is relevant to Section 2200.

Section 14506 is added as it defines beverage manufacturer, the definition of which is relevant to Section 2200.

Section 14530.5 is deleted as it is redundant with Section 14530.5 of the Authority Section.

Section 14536 is deleted as it is redundant with Section 14536 of the Authority Section.

Section 14575 is added as it gives the Department the authority to assess a processing fee on empty beverage containers which are required to be labeled per Section 14561 of the Act.

Article 3. Registration, Accounting and Reporting Requirements for Beverage Manufacturers

§ 2230. APPLICABILITY.

Article 3.: The title of Article 3 has been amended to add the word "Registration" because this section has been amended to include registration as a requirement for beverage manufacturers.

Subsection 2230 (a): This subsection is amended to provide clarity to the beverage manufacturer registration component by ensuring a registration process is specifically addressed. A registration process provides the Division the ability to apply reports and payments to the appropriate beverage manufacturer's account, using a unique identification number assigned by the Division to the beverage manufacturer. Although beverage manufacturers generally participate in a survey process conducted by Division staff that is similar to a formal registration process to report and make payments, the addition of specific registration requirements provides clarity for those who are not participating in the Division's survey process. (See New Section 2231 (a), below.)

The "s" in the plural form of the word "payments" has been deleted to be grammatically consistent in tense with the word "requirements," which is added to provide parallel sentence structure within the paragraph, as it relates to the previous use of "general requirements." These are nonsubstantive amendments.

Subsection 2230 (b): This subsection is amended to correct a grammatical inconsistency in the use of plural and singular tenses, and to provide consistency in referencing the “Act,” rather than both the “Act” and the “Public Resources Code.” These are nonsubstantive amendments. This subsection is also amended to add section 2231 and registration because registration is a requirement for beverage manufacturers.

Subsection 2230 (c): This subsection is amended to: 1) correct a grammatical inconsistency in the use of plural and singular tenses; 2) spell out the number of days required to submit a copy of the referenced written agreement to be consistent with general legal writing style; and 3) place parentheses around the number "10" to be consistent with general legal writing style. These are nonsubstantive amendments.

This subsection is amended to provide clarity with the addition of a specific time frame of ten (10) working days for the beverage manufacturer to submit to the Division any revised agreements to report and pay on the beverage manufacturer's behalf, in that a reasonable time frame to require revised agreements ensures the Division receives up-to-date information.

Subsection 2230 (c)(1-4): These subsections are amended to provide consistency in the use of “entity” rather than use of both “entity” and “company.” These are nonsubstantive amendments.

Subsection 2230 (c)(3): This subsection is amended to allow for a potential plural form of “business and mailing address;” that is, "business and mailing address(es).” This is a nonsubstantive amendment.

New Subsection 2230 (d): This subsection is added to provide an additional method to seek assurance, on behalf of the beverage manufacturer for which another entity has agreed to report and pay on its behalf, that an entity provided in the beverage manufacturer's listing is in fact paying and reporting on its behalf. Using the annual listing submitted by the beverage manufacturer, the Division may cross-reference its data against reports and payments received, or not received, by the Division. If an entity in the listing has not met payment and reporting requirements, the beverage manufacturer may then be provided notification by the Division.

Subsection 2230 (e): This subsection is renumbered from Subsection 2230 (d) to Subsection 2230 (e) due to the addition of new subsection 2230 (d). This is a nonsubstantive amendment.

Section 2230 Authority and Reference:

Section 14506 is deleted from the Authority Section as it is more appropriately applied as a reference defining beverage manufacturer; Section 14506 is added to the Reference Section, accordingly.

Section 14505 is added to the Reference Section as it defines beverage containers, the definition of which is relevant to this section.

Section 14530.5 is deleted from the Reference Section as it is not relevant to Section 2230, in that it discusses non-applicability of Government Code and Public Contract Code sections for consulting, promotional, or advisory services necessary to implement the Division.

Section 14536 is deleted from the Reference Section as it is an authority to adopt, amend, or repeal rules and regulations, and currently appropriately appears in the Authority Section.

§ 2231. REGISTRATION.

New Section 2231, Registration: This section is added to provide a registration process to register the beverage manufacturer, in that a registration process ensures that information is reported in a standardized manner, and utilizes the information obtained to effectuate payment and reporting responsibilities.

New Subsection 2231 (a): This subsection is added to require the beverage manufacturer to participate in a registration process and to receive a unique numerical beverage manufacturer identification number. Although beverage manufacturers generally participate in a survey process conducted by Division staff that is similar to a formal registration process to report and make payments, the addition of specific registration requirements provides clarity for those who are not participating in the Division's survey process. In order for the beverage manufacturer to report and make payments to the Division, a unique identification number must be assigned by the Division to each beverage manufacturer, in that this enhances the Division's ability to apply reports and payments to the appropriate beverage manufacturer's account, using the identification number obtained through the registration process.

New Subsection 2231 (b): This subsection is added to require the beverage manufacturer to contact the Division prior to the sale or transfer of beverages to ensure that the registration process is conducted as efficiently as possible. Although the majority of beverage manufacturers contact the Division prior to the sale or transfer of beverage containers, the addition of specific verbiage to do so provides clarity. Specific direction is particularly helpful in the instances of unregistered beverage manufacturers which may submit reports and/or payments that cannot be expeditiously processed until registration has been completed. In these cases, attempts are made by the Division to contact the unregistered beverage manufacturers to complete registration. However, processing of beverage manufacturer reports and/or payments is then unnecessarily delayed. Contacting the Division prior to the offer for sale, sale, or transfer of beverages also provides the Division the opportunity to educate the beverage manufacturer as to the requirements of the Act.

New Subsection 2231 (b)(1): This subsection is added to require the legal name and any "Doing Business As" names of the beverage manufacturer registering. To effectuate registration, the Division requires the minimum information of the legal name and any "Doing Business As" names of the entity registering. Requiring both allows the Division's auditing staff to conduct cross-referencing of names to ensure that the entities responsible for reporting and paying are doing so. Division staff responsible for registration functions would also be provided the ability to cross-reference names to identify entities who should be registered, and thereby subject to reporting and payment requirements.

New Subsection 2231 (b)(2): This subsection is added to require the beverage manufacturer to provide its federal tax identification number (also known as an Employer Identification Number), which is necessary to assist the Division's auditing staff in their conduct of audits, as its provision enables the identification of legally responsible parties. Division staff responsible for registration functions would also be provided the enhanced ability to cross-reference identification numbers to identify entities who should be registered (for example, if a change of ownership occurs), and thereby subject to reporting and payment requirements.

New Subsection 2231 (b)(3): This subsection is added to require the beverage manufacturer to provide its Department of Alcoholic Beverage Control (ABC) Certificate of Compliance Number, if it is an out-of-state beer or other malt beverage manufacturer. This is necessary to enable the Division's auditing staff to conduct audits, as its provision provides assistance in identifying legally responsible parties. Pursuant to Public Resources Code section 14575 (g)(2), the out-of-state beer or other malt beverage manufacturer holding the Certificate of Compliance is deemed to be the beverage manufacturer. The Certificate of Compliance Number is required by the Division to identify the beverage manufacturer and its ABC compliance status.

New Subsection 2231 (b)(4): This subsection is added to require the physical business address. This is necessary to contact the beverage manufacturer to review, verify, or provide information and/or documents, such as noncompliance notices, registration notices, or correspondence, and to provide the Division assistance in determining if the beverage manufacturer is subject to the requirements of the Act, based on its business location.

New Subsection 2231 (b)(5): This subsection is added to require the beverage manufacturer to provide its mailing address.

New Subsection 2231 (b)(6): This subsection is added to require, if applicable, additional business addresses, including: (A) Rented, leased, or owned California warehouse(s); (B) Sales office(s); (C) Corporate office(s) and (D) Other. These addresses are necessary to contact the beverage manufacturer to review, verify, or provide information and/or documents, such as noncompliance notices, registration notices, or correspondence, and/or to provide the Division assistance

in determining if the beverage manufacturer is subject to the requirements of the Act, based on its various business locations.

New Subsection 2231 (b)(7): This subsection is added to require the primary and secondary contact information of the beverage manufacturer, including name, title, telephone number, e-mail address, facsimile number, and web site, as applicable, to effectuate the Division's ability to contact the beverage manufacturer by means other than mailing and physical addresses.

New Subsection 2231 (b)(8): This subsection is added to require the beverage manufacturer to indicate its type of business ownership structure, and, if requested by the Division, provide copies of its correlating ownership documentation, as follows:

- (A) Sole Proprietorship (Fictitious Business Name Statement);
- (B) Married Co-Ownership (Fictitious Business Name Statement);
- (C) Corporation (Articles of Incorporation);
- (D) Non-Profit Corporation (Articles of Incorporation);
- (E) Cooperative (Articles of Cooperation);
- (F) Limited Liability Company (Articles of Organization);
- (G) General Partnership (Statement of Partnership Authority);
- (H) Limited Partnership (Certificate of Limited Partnership);
- (I) Limited Liability Partnership (Registered Limited Liability Partnership Registration); or
- (J) Other.

This information is necessary to assist the Division in its conduct of audits, and to identify responsible parties and the individuals from whom collections might be made. This information also enables the Division to better identify the entities participating in the State's recycling program.

New Subsection 2231 (b)(9): This subsection is added to require the beverage manufacturer to provide the effective date of beverage sales or transfer in California. This effective date establishes the initial reporting period expectation for ensuring the collection of reports and payments from beverage manufacturers.

New Subsection 2231 (b)(10): This subsection is added to require the beverage manufacturer to indicate if beverages are offered for sale or transfer, or proposed to be offered for sale or transfer to common carriers. Per Section 14501.5 of the Act, sales to common carriers are not subject to Chapter 5, Division 2, Title 14 of the Public Resources Code.

Public Utilities Code section 211 defines, in summary, a common carrier as any person and corporation providing transportation for compensation to, or for, the public or any portion thereof. Common carrier also includes, but is not limited to, railroad corporations and every other car corporation or person operating for

compensation within this state. In addition, common carrier includes, but is not limited to, every corporation or person owning or operating any vessel used in the transportation of persons or property upon the inland waters of California or upon the high seas between points within California, and any passenger stage corporation operating in California. (See Pub. Res. Code § 14501.5.)

Obtaining this information will assist the Division in its registration and auditing efforts in determining the beverage manufacturer's reporting and payment responsibilities, in that the response to this inquiry will confirm that the beverages offered for sale or sold to common carriers are not subject to the reporting and payment requirements of the Act.

New Subsection 2231 (b)(11): This subsection is added to require the beverage manufacturer to indicate if free beverage samples are offered, or proposed to be offered in California. This information will assist the Division in determining the beverage manufacturer's reporting and payment responsibilities, in that "gifted" beverages are subject to the requirements of the Act.

New Subsection 2231 (b)(12): This subsection is added to require the beverage manufacturer to provide the types of beverages, their container types, and the container sizes offered for sale or transfer, or proposed to be offered for sale or transfer in California. This information will assist the Division in determining the beverage manufacturer's payment and reporting responsibilities, in that specific beverage types, sold in aluminum, glass, plastic, and bi-metal containers, with specific size requirements, are subject to reporting and payment requirements.

New Subsection 2231 (b)(13): This subsection is added to require the beverage manufacturer to indicate if the beverages for sale or transfer are refillable or nonrefillable. This information will assist the Division in determining the beverage manufacturer's payment and reporting responsibilities, in that the statutory and regulatory reporting, payment and labeling responsibilities are different for refillable containers.

New Subsection 2231 (b)(14): This subsection is added to require the beverage manufacturer to indicate whether a California co-packer and/or contract bottler is used, or is proposed to be used, and contact information. A contract packer, or co-packer, is a company that manufactures and packages foods or other products for their clients. To market and distribute, a co-packer is commonly known within industry to work under contract with a hiring company to manufacture food and other products as though the products were manufactured directly by the hiring company. Obtaining this information will assist the Division in determining the beverage manufacturer's payment and reporting responsibilities, and provide the Division with information to contact the co-packer and/or contract bottler.

New Subsection 2231 (b)(15): This subsection is added to require the beverage manufacturer to indicate whether beverages are purchased or supplied from an

entity outside of California. Obtaining this information will assist the Division in determining the beverage manufacturer's payment and reporting responsibilities, and provide the Division with information to contact the exporters.

New Subsection 2231 (b)(16): This subsection is added to require the beverage manufacturer to identify the entities in California to which beverages are sold or transferred, including distributor contact information, if applicable. Obtaining this information will assist the Division in determining the beverage manufacturer's payment and reporting responsibilities.

New Subsection 2231 (c): This subsection is added to require the beverage manufacturer to contact the Division with any changes to the information provided pursuant to new Subsection 2231 (b)(1-16) within (10) ten working days of the changes. This provides the Division the opportunity to update its records and respond accordingly to changes in the information provided by the beverage manufacturer.

New Section 2231 Authority and Reference: New Section 2231 adds new Authority Sections 14530.5 and 14536; and new Reference Sections 14506 and 14575 to indicate the sections of statute that give the Department authority to promulgate these regulations.

§ 2235. RECORDKEEPING.

Subsection 2235 (d): This subsection is amended to delete from regulations the image of the "Beverage Manufacturer Report, DR-4" form in its hard copy format, and to delete "DR 4 (1/00)," the Division's form number.

With the implementation of an internet-based tool that allows for on-line reporting, it is necessary to delete the image of the "Beverage Manufacturer Report, DR-4" form, and to delete "DR 4 (1/00)," the Division's form number. If the image of the form is removed from regulations, its appearance can be modified to more closely mirror revisions made to the reporting screen form as it appears in DORIIS, without regulatory change. Including a form number in regulations is no longer necessary as there is no form number displayed in the DORIIS reporting screens, simply the form's name: "Beverage Manufacturer Report." (The hard copy form is available through the Department's web site or by request.)

Section 2235 Reference: Sections 14541 (c) and (d) are deleted as these sections address certain hearing requirements and probationary certificate conditions, and are not specifically related to the scope and purpose of Section 2235.

§ 2240. REPORTING.

This section is amended to delete from regulatory text "DR-4 (1/00)," a Division form number, in two instances, and to add the title of "Beverage Manufacturer Report," in place of the deleted form numbers for clarity. (See Subsection 2235 (d), above.)

Subsection 2240 (b): This subsection is amended to delete from regulatory text "DR 4 (1/00)," a Division form number, and to add the title of "Beverage Manufacturer Report," in place of the deleted form number. (See Subsection 2235 (d), above.)

This subsection is amended to revise examples of due dates. The year "2000" has been amended to "2010," a more relevant year, in six instances. This subsection is amended to delete each "th" following a numerical date to maintain correct editorial standards. These are nonsubstantive amendments.

This subsection is also amended to state that the Beverage Manufacturer Report must be submitted no later than the tenth day of the second month following the month of sales instead of on the 10th day of the second month following the month of sales. The Division will accept a Beverage Manufacturer Report before the due date.

Section 2240 Reference:

Section 14505 is added as it provides the Division's definition of a beverage container, which is applicable to this section.

§ 2245. PAYMENTS.

Section 2245 Reference:

Section 14530.5 is deleted from the Reference Section as it is redundant with Section 14530.5 of the Authority Section.

Section 14575 (h) is amended to Section 14575. This amendment more effectively encompasses the Division's authority relative to this section, in contrast to the limited reference of Section 14575 (h).

SUBCHAPTER 4. DISTRIBUTORS

Article 1. Distributor Requirements

§ 2300. APPLICABILITY.

Subsection 2300 (a): This subsection is amended to specifically outline the key components within the responsibilities of the distributor for registration, recordkeeping, reporting, and redemption payment requirements.

New Subsection 2300 (b)(1-4): This subsection is added to provide that a distributor shall: 1) notify the Division in writing if another entity has agreed to report and/or make redemption payments on its behalf; 2) provide a copy of the written agreement to report and/or make redemption payments within ten (10) working days of the initial agreement; and 3) submit any revised agreements to the Division, including termination of the agreement, within ten (10) working days of the revision. The information the Division requires to complete this process includes the names of each entity involved in the agreement; the distributor identification number; business and mailing address(es); and a signed and dated acknowledgement of the agreement by the authorized representative of each entity.

This information is necessary as, in some instances, other entities report and make the redemption payments on behalf of the distributor. These regulatory changes will assist the Division in identifying and tracking the entities reporting and making redemption payments. Through the Division's ability to track and monitor the agreements, the Division may then notify the distributors should payment and reporting requirements not be met.

New Subsection 2300 (c): This subsection is added to require the provision of an annual listing which is necessary as an additional method to seek assurance, on behalf of a distributor for which another entity has agreed to report and pay on its behalf, that each entity provided in the distributor's listing is in fact paying and reporting on its behalf. Using this listing, the Division may cross-reference its data against reports and payments received, or not received, by the Division. The distributor may then be provided notification by the Division should payment and reporting requirements not be met.

New Subsection 2300 (d): This subsection is added to provide that the Division will assert its authority to hold responsible the distributor, dealer, and/or consumer liable for any due and unpaid redemption payments. In the Division's efforts to meet the needs of industry, in its allowance of reporting and payment by entities other than the distributor, the Division must also clarify that the inherent responsibilities of the participants are not absolved as a result.

Section 2300 Reference:

Sections 14530.5 and 14536 are deleted from the Reference Section as they are duplicative of Sections 14530.5 and 14536 within the Authority Section, and are not required to be cited in the Reference Section.

Sections 14511, 14523, 14537, and 14550 are added to the Reference Section: Section 14511 provides the definition of distributor; Section 14523 provides the definition of redemption payment; Section 14537 provides auditing requirements; and Section 14550 provides distributor reporting requirements, all of which are applicable to Section 2300.

§ 2301. REGISTRATION.

New Section 2301, Registration is added to provide clarity in regard to the distributor registration component, by ensuring the registration function is specifically addressed. A registration process provides the Division the ability to apply reports and payments to the appropriate distributor's account, using a unique identification number assigned by the Division to the distributor. Although distributors generally participate in a survey process conducted by Division staff that is similar to a formal registration process to report and make payments, the addition of specific registration requirements provides clarity for those who are not participating in the Division's survey process.

New Subsection 2301 (a): This subsection is added to require the distributor to participate in a registration process and to receive a unique numerical distributor identification number. Although distributors generally participate in a survey process conducted by Division staff that is similar to a formal registration process to report and make payments, the addition of specific registration requirements provides clarity for those who are not participating in the Division's survey process. In order for the distributor to report and make payments to the Division, a unique identification number must be assigned by the Division to each distributor, in that this enhances the Division's ability to apply reports and payments to the appropriate distributor's account, using the identification number obtained through the registration process.

New Subsection 2301 (b): This subsection is added to require the distributor to contact the Division prior to the sale or transfer of beverages to ensure that the registration process is conducted as efficiently as possible. Although the majority of distributors contact the Division prior to the sale or transfer of beverage containers, the addition of specific verbiage to do so provides clarity. Specific direction is particularly helpful in the instances of unregistered distributors which may submit reports and/or payments that cannot be expeditiously processed until registration has been completed. In these cases, attempts are made by the Division to contact the unregistered distributor to complete registration. However, processing of distributor reports and/or payments is then unnecessarily delayed. Contacting the Division prior to the offer for sale, sale, or transfer of

beverages also provides the Division the opportunity to educate the distributor of the requirements of the Act.

New Subsection 2301 (b)(1): This subsection is added to require the legal name and any “Doing Business As” names of the distributor registering. To effectuate registration, the Division requires the minimum information of the legal name and any “Doing Business As” names of the distributor registering. Requiring both allows the Division's auditing staff to conduct cross-referencing of names to ensure that the entities responsible for reporting and paying are doing so. Division staff responsible for registration functions would also be provided the ability to cross-reference names to identify entities who should be registered, and thereby subject to reporting and payment requirements.

New Subsection 2301 (b)(2): This subsection is added to require the distributor to provide its federal tax identification number (also known as an Employer Identification Number), which is necessary to assist the Division's auditing staff in their conduct of audits, as its provision enables the identification of legally responsible parties. Division staff responsible for registration functions would also be provided the enhanced ability to cross-reference identification numbers to identify entities who should be registered (for example, if a change of ownership occurs), and thereby subject to reporting and payment requirements.

New Subsection 2301 (b)(3): This subsection is added to require the distributor provide its physical business address. This is necessary to contact the distributor to review, verify, or provide information and/or documents, such as noncompliance notices, registration notices, or correspondence, and to provide the Division assistance in determining if the distributor is subject to the requirements of the Act, based on its business location.

New Subsection 2301 (b)(4): This subsection is added to require the distributor to provide its mailing address. (See 2301 (b)(5), above.)

New Subsection 2301 (b)(5): This subsection is added to require additional business addresses, including: (A) Rented, leased, or owned California warehouse(s); (B) Sales office(s); (C) Corporate office(s); and (D) Other. These addresses are necessary to contact the distributor to review, verify, or provide information and/or documents, such as noncompliance notices, registration notices, or correspondence, and/or to provide the Division assistance in determining if the distributor is subject to the requirements of the Act, based on its various business locations.

New Subsection 2301 (b)(6): This subsection is added to require the primary and secondary contact information of the distributor, including name, title, telephone number, e-mail address, facsimile number, and web site, as applicable, to effectuate the Division's ability to contact the distributor by means other than mailing and physical addresses. (See 2301 (b)(5), and 2301 (b)(6) above.)

New Subsection 2301 (b)(7): This subsection is added to require the distributor to indicate its type of business ownership structure, and, if requested by the Division, provide copies of its correlating ownership documentation, as follows:

- (A) Sole Proprietorship (Fictitious Business Name Statement);
- (B) Married Co-Ownership (Fictitious Business Name Statement);
- (C) Corporation (Articles of Incorporation);
- (D) Non-Profit Corporation (Articles of Incorporation);
- (E) Cooperative (Articles of Cooperation);
- (F) Limited Liability Company (Articles of Organization);
- (G) General Partnership (Statement of Partnership Authority);
- (H) Limited Partnership (Certificate of Limited Partnership);
- (I) Limited Liability Partnership (Registered Limited Liability Partnership Registration); or
- (J) Other.

This information is necessary to assist the Division in its conduct of audits, and to identify responsible parties and the individuals from whom collections might be made. This information also enables the Division to better identify the entities participating in the State's recycling program.

New Subsection 2301 (b)(8): This subsection is added to require the distributor to provide the effective date of beverage sales or transfer in California. This effective date establishes the initial reporting period expectation for ensuring the collection of reports and payments from distributors.

New Subsection 2301 (b)(9): This subsection is added to require the distributor to indicate if beverages are offered for sale or transfer, or proposed to be offered for sale or transfer to common carriers.

Public Utilities Code section 211 defines, in summary, a common carrier as any person and corporation providing transportation for compensation to, or for, the public or any portion thereof. Common carrier also includes, but is not limited to, railroad corporations and every other car corporation or person operating for compensation within this state. In addition, common carrier includes, but is not limited to, every corporation or person owning or operating any vessel used in the transportation of persons or property upon the inland waters of California or upon the high seas between points within California, and any passenger stage corporation operating in California. (Also see Pub. Res. Code § 14501.5.)

Obtaining this information will assist the Division in determining the distributor's reporting and payment responsibilities, in that the response to this inquiry will confirm that the beverages offered for sale or sold to common carriers are not subject to the reporting and payment requirements of the Act.

New Subsection 2301 (b)(10): This subsection is added to require the distributor to indicate if free beverage samples are offered, or proposed to be offered in California. This information will assist the Division in determining the distributor's reporting and payment responsibilities, in that "gifted" beverages are subject to the requirements of the Act.

New Subsection 2301 (b)(11): This subsection is added to require the distributor to provide the types of beverages, their container types, and the container sizes offered for sale or transfer, or proposed to be offered for sale or transfer in California. This information will assist the Division in determining the distributor's payment and reporting responsibilities, in that specific beverage types, sold in aluminum, glass, plastic, and bi-metal containers, with specific size requirements, are subject to reporting and payment requirements.

New Subsection 2301 (b)(12): This subsection is added to require the distributor to indicate if the beverages for sale or transfer are refillable or nonrefillable. This information will assist the Division in determining the distributor's payment and reporting responsibilities, in that the statutory and regulatory reporting, payment and labeling responsibilities are different for refillable containers.

New Subsection 2301 (b)(13): This subsection is added to require the distributor to provide the name and location of beverage suppliers in California, including contact information. Obtaining this information will assist the Division in determining the origin of beverages, which will enable the Division to determine registration, payment, and reporting responsibilities.

New Subsection 2301 (b) (14): This subsection is added to require the distributor to indicate if beverages are purchased or supplied from an entity outside of California. This information will assist the Division in determining the distributor's reporting and payment responsibilities.

New Subsection 2301 (b)(15): This subsection is added to require the distributor to identify the entities in California to which beverages are sold or transferred, including distributor contact information, if applicable. Obtaining this information will assist the Division in determining the distributor's payment and reporting responsibilities.

For example, information regarding sales of beverages to a distributor, which then re-sells the beverage to a second distributor, or to other business entities engaged in the purchase, sale, or distribution of beverages, is necessary to assist the Division in determining payment and reporting responsibilities, in that the last distributor that sells the beverage to a dealer is responsible for payment and reporting.

New Subsection 2301 (c): This subsection is added to require the distributor to apprise the Division of any changes to the information provided pursuant to new Subsection 2301 (b)(1-15) within (10) ten working days of the changes. This

provides the Division the opportunity to update its records and respond accordingly to changes in the information provided by the distributor.

New Section 2301 Authority: New Section 2301 adds new Authority Sections 14530.5 and 14536 to indicate the sections of statute that give the Department authority to promulgate these regulations.

New Section 2301 Reference: New Section 2301 adds new Reference Sections 14501.5, 14511, 14550, 14560, and 14574. Section 14501.5 provides the exemption from the Act for common carriers; Section 14511 provides the definition of distributor; Section 14550 provides distributor reporting requirements; and Sections 14560 and 14574 provide redemption payment requirements, all of which are associated with registration.

§ 2305. RECORDKEEPING.

Subsection 2305 (c): This subsection is amended to delete from regulations the image of the "Distributor Report, DR-3" form in its hard copy format; to delete "DR-3 (7/07)," the Division's form number in two instances; and to add the title of "Distributor Report," in place of one of the deleted form numbers for clarity.

The Division began the Division of Recycling Integrated Information System (DORIIS) project in June 2007. DORIIS is a free internet-based tool for the recycling community that is designed to improve business processes, eliminate duplicative data entry, and provide program participants with timely and accurate information, as well as improved data analysis and reporting. DORIIS allows participants to report electronically, and receive or make payments electronically.

With the implementation of an internet-based tool that allows for on-line reporting, it is necessary to delete the image of the "Distributor Report, DR-3" form, and to delete "DR-3 (7/07)," the Division's form number. If the image of the form is not included in regulations, its appearance can be modified to more closely mirror revisions made to the reporting screen form as it appears in DORIIS, without regulatory change. Including a form number in regulations is no longer necessary as there is no form number displayed in the DORIIS reporting screens, simply the form's name: "Distributor Report." (The hard copy form is available to distributors through the Department's web site or by request.)

Section 2305 Reference: Section 14530.5 is deleted from the Reference Section as it is duplicative of Section 14530.5 within the Authority Section.

§ 2310. REPORTING.

Subsection 2310 (a): This subsection is amended to delete from regulatory text "DR 3 (7/07)," a Division form number. (See Subsection 2305 (c), above.)

Subsection 2310 (a)(1): This section is amended to delete from regulatory text "DR 3 (7/07)," a Division form number, and add "Distributor Report" in its place. (See Subsection 2305 (c), above.) This section also revises the distributor reporting due date to be consistent with statute.

Subsection 2310 (a)(2): This subsection is amended to delete from regulatory text "DR 3 (7/07)," a Division form number, and add "Distributor Report" in its place. (See Subsection 2305 (c), above.)

Subsection 2310 (a)(2)(D): This subsection is amended to delete " and total empty weight" because this information is not needed in the Distributor Reports.

Subsection 2310 (a)(2)(E): This subsection is deleted because it is redundant with information reported in subsection 2310 (a) (2) (D).

Subsection 2310 (a)(2)(F): This subsection is renumbered to Subsection 2310 (a) (2) (E) because the original Subsection 2310 (a) (2) (E) has been deleted.

Subsection 2310 (a)(2)(G): This subsection is renumbered to Subsection 2310 (a) (2) (F) because the original Subsection 2310 (a) (2) (E) has been deleted.

Subsection 2310 (a)(2)(H): This subsection is renumbered to Subsection 2310 (a) (2) (G) because the original Subsection 2310 (a) (2) (E) has been deleted.

Section 2310 Reference: Sections 14501 and 14505 are added to the Reference Section. Section 14501 provides legislative intent to ensure all beverage containers redeemed shall be recycled; and Section 14505 provides the definition of beverage container, both of which are relevant to Section 2310, and give authority to the Division to implement this regulation.

Section 14530.5 is deleted from the Reference Section as it is duplicative of Section 14530.5 within the Authority Section.

§ 2320. PAYMENTS.

Subsection 2320(g): This subsection is amended to delete the phrase "but not later than the last day of the third month following the sales or transfers" to make the regulation text consistent with statute.

Section 2320 Reference: Sections 14505, 14523, and 14560 are added to the Reference Section. Section 14505 provides the definition of beverage container; Section 14523 provides the definition of redemption payment; and Section 14560 provides the distributor's payment requirements, all of which are relevant to Section 2320, and give authority to the Division to implement this regulation.

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 web site: www.calrecycle.ca.gov. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 14th Floor, Sacramento, California. Please contact the agency contact person, Sharon Siozon, at (916) 322-1760 or at DORRegulations@calrecycle.ca.gov. General or substance questions regarding this file may also be directed to Sharon Siozon. The backup agency contact person for this rulemaking file is Tina Poole, who may be contacted at (916) 323-1833. 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 August 15, 2011. 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, Beverage Manufacturer and Distributor Forms and Registration Proposed Permanent Regulations, Department of Resources Recycling and Recovery, Division of Recycling, 801 "K" St., MS 14-35, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@calrecycle.ca.gov or faxed to (916) 552-4995.

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

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 Division initiated the Division of Recycling Integrated Information System (DORIIS) project in June 2007. DORIIS is a free internet-based tool for the recycling community that is designed to improve business processes, eliminate duplicative data entry, and provide program participants with timely and accurate information, as well as improved data analysis and reporting. DORIIS allows participants to report electronically, and will allow them to receive or make payments electronically. The Division will continue to allow program participants to submit paper copies of all required documents and to send payments or receive payments by mail.

Beverage manufacturers and distributors are required to report and pay the appropriate processing fees and redemption payments to the Division, as specified. In order to determine the entities responsible for payment of these fees and create accounts for payment collection, it is necessary for these entities to register with the Division prior to selling specified products and making payments on those products.

These regulations clarify what information is necessary for the Division to register manufacturers and distributors to establish accounts for accounting purposes and maintain contact information to meet statutory and regulatory requirements for reporting and payments. Additionally, if a distributor is paying for someone else, the Division must know who is making payments for whom.

Definitions have also been added to provide clarification for statutory references to the terms "transfer" and "vegetable juice" as applied by the Division.

As a result of DORIIS, and as a result of necessity, the Division has identified several changes that will facilitate the registration, recordkeeping, reporting, and payment processes for distributors and beverage manufacturers and clarify through definitions the general application of terms established in statute. These include 1) Provide that "transfer" includes beverage containers given as a donation, promotional give-away, or as a sample; 2) Provide that "vegetable juice" means one hundred percent juice; 3) Specify that labeling approval is required prior to the offer for sale, sale, or transfer of the beverage container; 4) Require proposed sample labels; 5) Require copies of agreements between

distributors and those who have agreed to pay/report on their behalf; 6) Require a registration process that contains information requirements; 7) Remove the images of the "Beverage Manufacturer Report" and the "Distributor Report" hard copy forms, and their form numbers, from regulations; and 8) Require annual listings of entities paying/reporting on behalf of the beverage manufacturer or distributor.

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 14500, 14501, 14501(f), 14501.5, 14503, 14503.6, 14504, 14505, 14506, 14506.5, 14509.5(b), 14511, 14511.7, 14512, 14512.5, 14513, 14514.4.1, 14514.7, 14517, 14518, 14518.5, 14519.5, 14520, 14520.5, 14520.6, 14522.5, 14523, 14524, 14525.5.1, 14526, 14530, 14530.2, 14536(a), 14537, 14538, 14539, 14550, 14550(b), 14550(c), 14552, 14560, 14561, 14571.2, 14571.8(b), 14572, 14572.5, 14573, 14573.5, 14573.51, 14574, 14575, 14575(a), 14575(b), and 14575(g), 14575 (g)(1), 14575(g)(3)(B), and 14575(j)(2).

DISCLOSURES REGARDING THE PROPOSED ACTION

PLAIN ENGLISH REQUIREMENT

The Department staff prepared the proposed regulation changes pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2 (a)(1). The proposed regulations are considered non-technical and are written to be easily understood by the parties that will use them.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS

Department staff has determined that the proposed regulations do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630; 4) other nondiscretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

FINDINGS ON NECESSITY OF REPORTS

Department staff has found that the requirements for specific reports are necessary to allow program participants to report electronically or to submit paper copies of all required documents.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These proposed regulations will serve to clarify and make specific existing statutory requirements.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

Department staff have made an initial determination that the proposed regulation changes would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with other states.

EFFECTS ON SMALL BUSINESSES

The Department has determined that the adoption of these proposed regulations may affect small businesses. The Department has determined that these regulations will have no significant impact on small businesses because small businesses are not required to submit documents to the Department electronically. These proposed regulations do not mandate actions upon private persons or businesses.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF 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.

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 RESOURCES RECYCLING AND RECOVERY 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 Resources Recycling and Recovery website at: www.calrecycle.ca.gov.