

EMERGENCY REGULATIONS
IMPORTED EMPTY BEVERAGE CONTAINER MATERIAL
TITLE 14. NATURAL RESOURCES
DIVISION 2. DEPARTMENT OF CONSERVATION - CHAPTER 5. DIVISION OF RECYCLING

FISCAL IMPACT ESTIMATE

Statement of the Mandate

The California Beverage Container Recycling and Litter Reduction Act (Act) (Public Resources Code, Division 12.1 (commencing with § 14500)) promotes recycling specific beverage containers and the reduction of beverage container litter in the State. The Department of Resources Recycling and Recovery (department), through its Division of Recycling (division), is responsible for administering the Act and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

These emergency regulations are designed to implement Chapter 8.5 of the Act, including Public Resources Code section 14596, as amended by AB 1933 in September 2012, and more specifically to ensure all persons importing empty beverage containers are subject to reporting and inspection requirements when they bring loads of imported empty beverage container material into California in excess of the statutory thresholds. (Stats. 2012, Ch. 540, Sect. 2 (AB 1933 (Gordon) 2011-2012 Sess.)) The department is adopting amendments to Title 14, Division 2, Chapter 5 of the California Code of Regulations (CCR) consisting of changes to sections in Subchapters 1, 2, & 6, and the addition of a new Subchapter 11.1. (14CCR §§ 2000, 2085, 2501 (amended) and 2830-2835 (new).)

The proposed regulations changes do not require local entities to undertake a new program or to provide an increased level of service in an existing program.

The proposed modifications to the existing regulations do not:

- 1) Implement a federal mandate.
- 2) Implement a court mandate.
- 3) Implement a mandate in a ballot measure approved by the voters.
- 4) Result from a documented request from the only local governments affected.
- 5) Provide (or fall within the purview of existing) revenue sources or other financing mechanisms.

Reporting and Inspection Requirements

Background & Introductory Material

The goal of the Act is an 80% recycling rate for beverage containers included in the program. The department provides a number of services to help achieve this goal, including nonprofit grant management, public outreach and education, technical assistance, enforcement, auditing, economic analyses, and processing and paying program claims for California Refund Value (CRV).

The Act requires beverage distributors selling or distributing beverages included in the Act to make a redemption payment of five cents or ten cents per container for each covered beverage sold or distributed in California. This money is deposited into the Fund. Based upon valid requests for reimbursement, money is paid out of the Fund to reimburse processors for the CRV

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they paid to certified recyclers who redeemed CRV eligible containers from consumers who present empty CRV eligible containers to them for redemption.

Section 14595 of the Act declares that the CRV redemption of imported empty beverage container material at certified recycling centers and processors presents a significant threat to the integrity of the Fund. Furthermore, Public Resources Code section 14595.5(a)(1) states that no person shall pay, claim, or receive any refund value, processing payment, or handling fee, or administrative fee for beverage container material that the person knew, or should have known, was imported from outside of California.

Since the inception of the program there have been unscrupulous individuals and entities defrauding the Fund by redeeming non-qualifying empty beverage containers for CRV (e.g., imported from out-of-State, out-of-country, or previously redeemed empty beverage containers). Although imported empty beverage containers often contain the CRV message, they do not qualify for CRV because they were not sold in California. As a result, the Fund, and, more importantly, the people of California, loses five or ten cents for each imported empty beverage container illegally redeemed for CRV in California.

Although it is illegal to redeem imported empty beverage containers for CRV, it is not illegal to import empty beverage container materials into California, if individuals/entities selling the material only receive the applicable scrap value of the commodity. These factors complicate efforts by the department and our enforcement partners at the Department of Justice (DOJ), to effectively detect, investigate and prosecute fraudulent activities associated with the importation and illegal CRV redemption of imported empty beverage containers. These factors also complicate certified recycling center operators' ability to effectively perform inspections for qualifying materials.

The department, and our partners at DOJ have observed, and our partners at the California Department of Food and Agriculture (CDFA) have gathered survey data, indicating a significant number of individuals/entities frequently import large loads of imported empty beverage containers from other states and countries (e.g., Nevada, Arizona, New Mexico, and Mexico).

During the period of August 1, 2012, through July 31, 2013, the department and CDFA surveyed vehicles importing used beverage containers into California through all 16 CDFA Plant Quarantine Inspection Station (CDFA border station) locations. During this time CDFA data documented 3,888 vehicles transporting imported empty beverage container materials through border stations (this total includes 527 rental trucks filled with imported empty beverage containers). While it is not illegal to import empty beverage containers into California, it is illegal to redeem imported empty beverage containers for CRV. A conservative projection based on this CDFA survey data results in an estimated minimum fraud exposure of \$5-7 million annually to the Fund associated with imported empty beverage container materials transported in rental trucks alone.

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Furthermore, investigations conducted by the department and DOJ have revealed that large loads of imported aluminum and plastic empty beverage container materials (up to and greater than 5,000 pounds) are being transported by individuals/entities into California on a daily basis, often using rental trucks. These large loads are subsequently broken down into smaller loads, typically less than 500 or 250 pounds, to avoid the daily load limits and/or possible detection through required reporting. Multiple individuals then transport the smaller loads of out-of-state empty beverage container in pick-up trucks, vans, and passenger cars to certified recycling centers and illegally redeem the material for CRV.

Because this type of activity constitutes fraud and is a felony crime, individuals/entities doing so have taken drastic measures to avoid being detected, such as performing counter-surveillance, entering into California using auxiliary roads to avoid CDFG border stations, entering into California after midnight and before sunrise, trying to hide materials from view when transporting them, storing or breaking down large loads of imported empty beverage container materials, etc. The actions of these individuals/entities and the certified recycling centers who purchase from them knowing or suspecting the imported empty beverage container materials are ineligible for CRV redemption are draining the Fund of millions of dollars each year. Certified recycling center operators who facilitate or participate in illegal redemption pose a significant threat to the businesses of honest recycling center operators who know or suspect the imported empty beverage container materials are ineligible and do the right thing by refusing to purchase the imported empty beverage container materials.

Finally, based upon data published by the national trade association of the metal and composite can manufacturing industry, the Can Manufacturers Institute (CMI) in their 2010/11 Annual Report, just over 96 billion aluminum beverage cans were shipped domestically by CMI member companies in 2010. (<http://www.cancentral.com/sites/cancentral.com/files/public-documents/2010-cmi-annual-report.pdf>.) According to CMI representatives, approximately 30% of these beverage containers (approximately 28 billion) had a CRV label. In 2010, beverage distributors reported and paid California redemption payments for approximately 8.8 billion beverage containers sold in California. This represents a difference of approximately 19.2 billion beverage containers. Based upon this data, there is a potential risk to the Fund of approximately \$96 million associated with the importation and illegal CRV redemption of imported aluminum empty beverage container materials alone.

The Act is the basis for the regulation changes being proposed. The department proposes to adopt amendments to Title 14, Division 2, Chapter 5 of the California Code of Regulations (CCR) consisting of changes to sections in Subchapters 1, 2, & 6, and the addition of a new Subchapter 11.1. (14CCR §§ 2000, 2085, 2501 (amended) and 2830-2835 (new).) DOR proposes to adopt these regulations to implement the reporting and inspection provisions contained in Public Resources Code § 14596(a) & (b), as amended by AB 1933 in September 2012. The department will propose permanent regulations after the consideration of all comments, objections or recommendations.

Pursuant to Chapter 3.5 of the Government Code (commencing with § 11340) of Part 1 of Division 3 of Title 2, the department is undertaking this rulemaking proceeding to adopt

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regulations to address the significant threat to the Fund resulting from the importation of empty beverage container materials and the subsequent illegal CRV redemption at certified recycling centers. The department strongly believes that implementing these reporting and inspection requirements will help resolve issues associated with the individuals/entities importing empty beverage container materials into California and illegally redeeming them for CRV at certified recycling centers.

Working Data:

The analysis/assessment of the economic and fiscal impacts associated with the proposed regulations uses the following data sources.

1. CDFA Border Station Survey Data:

The primary source of data is the survey data obtained by agents operating the 16 CDFA border inspection stations located throughout California. In accordance with the interagency agreement between the department and CDFA, during the period of August 1, 2012, and July 31, 2013, CDFA surveyed all vehicles importing empty beverage container materials through CDFA border stations and gathered specific data. Data included, but was not limited to, CDFA entry point, data and time of entry, vehicle type, beverage container material type, etc.) The survey data gathered by agents at each CDFA border station was transmitted daily to the department. Once received, department staff entered the survey data into a database where it was organized, analyzed and monitored. The department developed an internal report, titled the *Out of State Importers Report* which was routinely provided to CDFA and DOJ.

Based upon data collected by CDFA and reported to CalRecycle during the period of August 1, 2012, through July 31, 2013, a total of 3,888 vehicles were identified as importing empty beverage container materials into California through the 16 CDFA border stations. This number represents the known universe of all impacted individuals and/or businesses entering California through CDFA operated quarantine inspection stations.

The breakdown for each type of vehicle is as follows:

1. Commercial Trucks: 477
2. Rental Trucks: 527
3. Pick-up Trucks: 39
4. Auto: 2,357
5. Other: 488

2. Interstate Truck Driver Salary Data:

Department staff conducted research via the internet to determine the average annual salary of an interstate truck driver, so cost calculations associated with the time a truck driver would incur to complete/submit the required report form and the time associated with CDFA's inspection of the imported beverage container materials could be performed.

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Based upon the information obtained via the department's research, the following information is the source data for the average annual salary for an interstate truck driver.

<u>URL</u>	<u>Average Salary</u>
simplyhired.com	\$28,000
glassdoor.com	\$39,000
payscale.com	\$43,000

For use in our calculations, the department simply determined the average of the three annual salary amounts listed above which is \$36,600. This amount is used by the department as the average salary for an interstate truck driver. Broken down monthly and hourly, this comes to approximately \$3,050 per month (\$36,600/12), or approximately \$19 per hour (\$3,050/160 hours).

3. Certified Weigh Master's Certificate Cost Data:

Department staff also conducted research via the internet to determine the average cost of obtaining a Certified Weigh Master Certificate so cost calculations could be performed. Cost information was obtained from the CAT Scale Company which operates hundreds of truck scales located throughout the United States.

Based upon the information obtained via the department's research, the typical cost for obtaining a Certified Weigh Master's Certificate ranges from approximately \$25 to approximately \$40. For calculation purposes CalRecycle uses \$40 as the cost for obtaining a certified weigh master's certificate. This cost includes two passes over the scale in order to determine the gross weight and tare weight of the load.

4. Imported Material Report and CDFA Vehicle Inspection Data:

Department staff estimated the time associated with completing the required report, regardless of the vehicle type, to be ½ hour. Department and CDFA staff also estimated the time to perform CDFA's inspection of a single vehicle importing empty beverage container materials, regardless of the vehicle type, to be ½ hour.

Assumptions:

CDFA Border Station Survey Data:

Although the CDFA survey data included above indicates only 477 'Commercial' vehicles entered California with imported empty beverage containers during the survey period, the proposed regulations make all vehicles entering California with more than 25 pounds of aluminum, bimetal or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material subject to the proposed reporting and inspection requirements. Therefore, for purposes of this economic impact analysis/assessment, the total vehicle count of 3,888 is used in all calculations in order to derive the total annual estimated costs. Finally, because CDFA survey data revealed that the overwhelming majority of vehicles

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imported a single beverage container material type (i.e., aluminum, glass, PET plastic, or HDPE plastic) cost calculations assume that each vehicle is transporting a single beverage container material type.

Interstate Truck Driver Salary Data:

Although the CDFA survey data indicates only 477 'Commercial' vehicles entered California with imported empty beverage container materials during the survey period, the proposed regulations require all individuals/businesses entering California with more than 25 pounds of aluminum, bimetal or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material to complete an Imported Material Report (IMR) and allow CDFA to inspect their vehicle. Therefore, for the purposes of this economic impact analysis/assessment, CalRecycle assigns the average salary information for an interstate truck driver to each of the 3,888 vehicles surveyed by CDFA in order to derive the total annual estimated costs.

Imported Material Report and CDFA Vehicle Inspection Data:

The proposed regulations require all individuals/businesses entering California with more than 25 pounds of aluminum, bimetal or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material to complete an IMR and allow CDFA to inspect their vehicle, therefore CalRecycle assigns the estimated time to complete the IMR and to allow CDFA to conduct a vehicle inspection to each of the 3,888 vehicles surveyed by CDFA.

Certified Weigh Master's Certificate Cost Data:

The proposed regulations require all vehicles entering California with more than 100 pounds of imported empty beverage container materials to obtain and retain a copy of a certified weigh master's certificate for each load of material. Therefore, for the purposes of this economic impact analysis/assessment, CalRecycle assigns the cost of obtaining a certified weigh master's certificate to each of the 3,888 vehicles surveyed by CDFA. Finally, CDFA survey data revealed that the overwhelming majority of vehicles imported a single beverage container material type (i.e., aluminum, glass, PET plastic, or HDPE plastic) so cost calculations assume that each vehicle is transporting a single beverage container material type.

Calculations:

The economic impact analysis/assessment identifies the economic activity that could be affected by implementation of the proposed regulations, which would impose specific reporting and inspection requirements on individuals and/or entities importing empty beverage container materials into California.

As stated previously, the total number of vehicles surveyed by CDFA during the time period of August 1, 2012, through July 31, 2013, was 3,888. For estimation purposes, the department assumes that all of the vehicles were operated by commercial truck drivers employed by businesses operating in California, were carrying loads of empty beverage container material weighing more than the applicable threshold and over 100 pounds, and would be subject to the proposed reporting and inspection requirements, including providing a certified weigh master's certificate. It is unlikely that all 3,888 of the vehicles actually met all of these criteria, which

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makes the department's estimate over inclusive. Removing any of those assumptions would reduce the cost of importing the material. Accordingly, the department's estimate is higher than the actual costs that California businesses are likely to experience. Based on these criteria, the annual statewide dollar cost for California businesses is estimated by the department as follows:

1. Estimated cost for completing the IMR per material type:
 - $\frac{1}{2}$ hour per IMR x 3,888 vehicles = 1,944 hours. $1,944 \times \$19$ per hour = \$36,936. (Assumes all 3,888 vehicles were importing a single beverage container material type.)
 - **\$36,936** is the total annual estimated cost for completing the required IMR for ALL individuals and/or businesses importing a single empty beverage container material type.
2. Estimated cost associated with driver's idle time during CDFA inspection/validation of IMR for imported empty beverage container materials (per vehicle):
 - $\frac{1}{2}$ hour per individual/vehicle x 3,888 = 1,944 hours. $1,944 \times \$19$ per hour = \$36,936.
 - **\$36,936** is the total annual estimated cost associated with CDFA's inspection/validation of IMRs associated with ALL individuals entering California with imported empty beverage container materials.
3. Estimated cost for obtaining certified weigh master's certificates (including gross, tare & net weights) per each material type:
 - \$40 per weight ticket x 3,888 vehicles = approximately \$155,520.
 - **\$155,520** is the total annual estimated cost for obtaining certified weigh master's certificates for ALL individuals entering California with imported empty beverage container materials.

Conclusions:

Based upon the data sources outlined above and the department's assumptions regarding the individuals and/or businesses that would be subject to an economic impact as a result of the implementation of these proposed regulations, the total annual estimated statewide economic cost for ALL individuals and/or businesses to comply with the proposed reporting and inspection requirements is \$229,392 ($\$36,936 + 36,936 + 155,520$). The total estimated cost for each load of imported empty beverage container materials is \$59.00 ($\$229,392/3,888$). The department believes the estimates are over inclusive and that the actual cost to California businesses will be less than the amounts projected here.

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Prohibition Against Receiving Imported Material

Background & Introductory Material:

Under current law, empty beverage container material imported from out of state is ineligible for refund value and other recycling program payments. (Pub. Res. Code §§ 14538(b)(5), 14538(b)(6), 14539(b)(5), 143539(b)(6), 14539.5(b), 14572(d)(2), 14595, and 14595.5.) Section 14595 of the Act declares that the redemption of imported empty beverage container material at certified recycling centers and processors presents a significant threat to the integrity of the Fund. Furthermore, Section 14595.5(a)(1) states that no person shall pay, claim, or receive any refund value, processing payment, handling fee, or administrative fee for beverage container material that the person knew, or should have known, was imported from outside of California.

Although it is illegal to redeem imported empty beverage container material for CRV, it is not illegal to import empty beverage containers into California, if the importers receive only the applicable scrap value of the commodity. The scrap value for aluminum, plastic, or glass is based upon commodities market values with only minor regional variations. For example, the prevailing scrap value per ton for aluminum beverage container material offered by legitimate scrap metal dealers in California varies little, if at all, from the prevailing scrap value per ton for aluminum beverage container material offered by legitimate scrap metal dealers in Nevada, Arizona, New Mexico, or other nearby states. However, CRV inflates the value of the material beyond its scrap value and make its importation attractive.

These factors complicate efforts by the department and its enforcement partners to effectively detect, investigate, and prosecute fraudulent activities associated with the importation and illegal redemption of imported empty beverage containers. These factors also frustrate the efforts of legitimate operators to performing inspections for material that is eligible for program payments. Furthermore, honest operators are at a disadvantage when they refuse to pay or claim CRV on imported empty beverage containers, because other unscrupulous operators accept imported empty beverage containers and illegally pay and claim CRV for them. Thus, imported empty beverage containers create an economic incentive for operators to facilitate or become active participants in defrauding the Fund using imported material.

Working Data:

Approximately \$850 million dollars of CRV payments are made by the Fund each year. The illegal redemption of imported empty beverage container material for CRV is conservatively estimated by California Department of Justice at approximately \$30 million dollars annually. The department has estimated that the impact associated with the material imported in rental trucks alone is \$5 to \$7 million per year.

These emergency regulations prohibit a person or business registered by the department as a curbside program or certified by the department as a recycling center, dropoff or collection

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program, or community service program from accepting, receiving or taking delivery of any empty beverage container material the person or business knows, or should know, was imported into this State. Previously, while the imported material was ineligible for CRV and other program payments, certified recycling centers were permitted to purchase the material for its scrap value. That will no longer be allowed under the proposed regulations.

There are approximately 1,450 business operating certified recycling centers, certified collection or dropoff programs, certified community service programs, and registered curbside programs in California that will no longer be able to purchase or take delivery of imported empty beverage containers.

Of the approximately 1450 businesses impacted by the new prohibition against taking delivery of imported empty beverage container material, only the certified recycling centers may currently purchase imported material for its scrap value and then sell it to scrap dealers or end users, without claiming CRV. Only 1069 of the impacted businesses operate certified recycling centers.

There is no hard data available to the department on the value to certified recycling centers of purchasing and selling imported empty beverage container material solely for its scrap value.

Assumptions:

Despite the absence of hard data on the actual costs, the department assumes there is some cost associated with certified recycling centers no longer being able to accept and sell imported material for its scrap value only. Because it is already illegal for certified recycling centers to pay or claim CRV or other recycling program payments for imported material, the department believes the majority of lawful operators do not purchase or sell imported material at all, or if they do, it is only occasionally, in small amounts, and does not comprise a significant component of their businesses.

Calculations:

There is no hard data available to the department on the value to certified recycling centers of purchasing and selling imported empty beverage container material solely for its scrap value. Accordingly, there is no basis for calculating the costs of the new prohibition against accepting imported material.

Conclusion:

While the department recognizes there is some cost associated with certified recycling centers no longer being able to accept and sell imported material for its scrap value, data is not currently available to estimate those costs. Because it is already illegal for certified recycling centers to pay or claim CRV or other recycling program payments for imported material, the department

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estimates the *legitimate* costs associated with the prohibition against accepting imported material will be quite low, and limited to a small segment of the overall regulated community.