

Addendum to Economic and Fiscal Impact Statement (STD. 399)

Note: This document is a narrative addendum to the responses and information listed on the accompanying STD 399 form.

A. ESTIMATED PRIVATE SECTOR COST IMPACTS

1. Check the appropriate box(es) to indicate whether this regulation:

a. Impacts businesses and/or employees

The proposed regulations would require all individuals and businesses transporting more than 25 pounds of aluminum, bimetel, or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material, into California to complete and submit an Imported Material Report (IMR) and submit to an inspection by California Department of Food & Agriculture (CDFA) Quarantine Inspection Station (CDFA border station) personnel. For loads of more than 100 pounds, a certified weigh master's certificate must also be obtained and presented.

The proposed regulations also prohibit certified recycling centers from purchasing or taking delivery of imported empty beverage container material from any source and collection or dropoff programs and community service programs from taking delivery of imported empty beverage container material from any source.

e. Imposes reporting requirements

The proposed regulations would require all individuals and businesses transporting more than 25 pounds of aluminum, bimetel, or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material, into California to complete and submit an IMR. For loads of more than 100 pounds, a certified weigh master's certificate must also be submitted.

g. Impacts individuals

The proposed regulations would require all individuals and businesses transporting more than 25 pounds of aluminum, bimetel, or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material, into California to complete and submit an IMR and submit to an inspection by CDFA border station personnel. For loads of more than 100 pounds, a certified weigh master's certificate must also be submitted.

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2. Total number of businesses impacted:

5,338. Based upon data collected by CDFA and reported to the Department of Resources Recycling and Recovery (department) during the period of August 1, 2012, through July 31, 2013, a total of **3,888 vehicles** were identified as importing out of state empty beverage containers into California through the 16 CDFA border stations. This number represents the universe of all impacted individuals and/or businesses entering California through CDFA border stations assuming that each vehicle identified by CDFA was unique. This number also assumes that every individual importing empty beverage containers into California is also a business.

In addition, 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.

Describe the types of businesses (Include nonprofits.):

Individuals and businesses importing empty beverage containers into California will be affected by the proposed reporting and inspection requirements.

Additionally, these proposed regulations will 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 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 California Refund Value (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.

Under current law, imported empty beverage containers are not eligible for CRV or other program payments but these empty beverage containers may be sold to scrap dealers and end-users in California as scrap material. It should be noted that the scrap value for these commodities (e.g., 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.

d. The number or percentage of total business impacted that are small businesses:

Unknown. Data is not currently available for the department to accurately estimate/identify which of the businesses described in section A.2. are small businesses. The proposed regulations may allow the department to acquire this information in the future.

B. ESTIMATED COSTS

1. What are the total statewide dollar cost that businesses and individuals may incur to comply with this regulation over its lifetime?

d. Describe other economic costs that may occur:

As stated previously, only individuals and businesses importing empty beverage containers into California will be affected by the proposed reporting requirements. Estimated costs include the individual's and/or business's time and expense completing the IMR (whether online or upon arrival at the border station), driver's idle time during CDFA validation of the IMR and vehicle inspection, and the cost of obtaining a certified weigh master's certificate.

Additionally, these proposed regulations will 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 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.

3. Annual costs a typical business may incur to comply with these requirements:

Data is not currently available for the department to accurately estimate the number of businesses that will be affected by the proposed reporting requirements. The proposed regulations are designed, in part, to acquire the detailed information needed to accurately respond to this question. The following numbers are based on the department's assumption that every vehicle CDFA surveyed, and every individual driving one of those vehicles, is a business operating in California. We realize that this is almost certainly a gross over-estimation, but there is no other information upon which to base an estimate. Every vehicle entering California with imported empty beverage container materials in excess of the statutory thresholds will be subject to the proposed reporting and inspection requirements.

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Based upon data collected and reported to the department by CDFA during the period of August 1, 2012, through July 31, 2013, a total of 3,888 vehicles were identified as importing out-of-state empty beverage containers into California through the 16 CDFA border stations. This number represents the largest possible universe of impacted individuals and/or businesses entering California through CDFA border stations. Based upon this data, the department calculates the total annual estimated cost for ALL individuals and/or businesses to be **\$229,392**. For each load of imported empty beverage container materials equates to **\$59.00**. Detailed cost estimate calculations can be found on pages 4-8 of the Economic Impact Analysis/Assessment which is part of the rulemaking file.

5. Explain the need for State regulation given the existence or absence of Federal regulations:

There are no Federal laws or regulations regarding beverage container recycling. The California Beverage Container Recycling and Litter Reduction Act (Public Resources Code (PRC), Division 12.1 (commencing with § 14500)) occupies the field of beverage container regulation in this state and is the basis for the regulation changes being proposed. The department proposes to adopt these regulations to implement Chapter 8.5 of the Act (Pub. Res. Code §§ 14595-14599), particularly the reporting and inspection provisions contained in Public Resources Code section 14596, as amended by AB 1933 in September 2012. (Stats. 2012, Ch. 540, Sect. 2 (AB 1933 (Gordon) 2011-2012 Sess.).)

C. ESTIMATED BENEFITS

1. Briefly summarize the benefits that may result from this regulation and who will benefit:

Direct Benefit:

The primary impact of illegal redemption of imported empty beverage container materials is the theft of California consumers' money (i.e., CRV) from the Fund. No CRV is paid into the Fund for the imported empty beverage container material being illegally redeemed for CRV, so the Fund loses \$0.05 or \$0.10 for every imported empty beverage container illegally redeemed at a certified recycling center or other facility type. Due to the large volume of imported empty beverage containers being redeemed illegally, this activity is a significant threat to the fiscal stability of the Fund.

An additional impact is the corruption of legitimate markets, where honest operators are disadvantaged due to unfair competition created when they refuse to pay CRV on imported empty beverage containers, but other unscrupulous operators accept imported empty beverage containers and illegally pay CRV for them. Imported empty beverage containers create an economic incentive for operators to facilitate or become an active participant defrauding the Fund.

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In terms of the illegal redemption of imported empty beverage container material, the purpose and benefit of the proposed regulations is to:

- Protect the public interest by reducing the efficiencies and profitability associated with the illegal redemption of imported empty beverage container materials for CRV by increasing the documentation foot print and eliminating the anonymity of individuals and businesses associated with importing empty beverage container materials;
- Reduce the total number of vehicles illegally importing empty beverage container materials into California through CDFA border stations;
- Eliminate the ability for registered curbside programs and certified recycling centers, dropoff or collection programs, and community service programs to legally receive imported empty beverage container material. The proposed regulations prohibit those persons and entities from accepting imported beverage container material and create a significantly higher risk for the individuals and/or business engaged in illegal redemption of imported empty beverage container materials; and
- Reduce corruption of legitimate markets, where honest operators suffer due to unfair competition created by operators who knowingly receive imported empty beverage container materials and illegally pay CRV for them.

Indirect Benefit:

The intent and purpose of the proposed regulations is to protect the public interest concerning approximately \$850 million dollars of CRV payments each year. Illegal redemption of imported empty beverage container materials for CRV is conservatively estimated by DOJ at approximately \$30 million dollars annually.

Establishing a reporting and inspection requirement for individuals importing empty beverage container materials into California is just one element of an overall strategy being used by the department to address abuse and fraud being perpetrated against the Fund.

2. Are the benefits the results of: Specific statutory requirements

The California Beverage Container Recycling and Litter Reduction Act (Act) (Public Resources Code (PRC), Division 12.1 (commencing with § 14500)) 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

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Subchapters 1, 2, & 6, and the addition of a new Subchapter 11.1. (14CCR §§ 2000, 2085, 2501 (amended) and 2830-2835 (new).) The department proposes these regulations to implement the reporting and inspection provisions contained in Public Resources Code § 14596, as amended by AB 1933 in September 2012. (Stats. 2012, Ch. 540, Sect. 2 (AB 1933 (Gordon) 2011-2012 Sess.).)

3. What are the total statewide benefits from this regulation over its lifetime?

Unknown. The department and our partners at DOJ have substantial observational evidence that individuals and businesses importing empty beverage container materials are subsequently breaking the loads down into smaller quantities to avoid detection and illegally redeeming the materials for CRV at certified recycling centers.

Based upon data collected by CDFA and reported to the department 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 universe of all impacted individuals and/or businesses entering California through CDFA border stations. The breakdown for type of vehicles is as follows:

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

The department strongly believes that the vehicle categories listed above, with the possible exception of ‘commercial trucks’, are importing empty beverage container materials into California with the sole purpose of illegally redeeming the materials for CRV. With the possible exception of the ‘commercial trucks’ category, the department strongly believes the implementation of the proposed reporting and inspection requirements, along with the current statutory requirement for all vehicles importing empty beverage container materials to enter into California via a CDFA border station, will significantly deter individuals from continuing to import empty beverage container materials.

Under the proposed regulations, the individual driving the vehicle will be required to provide specific personal information (i.e., driver’s license number) about themselves. In accordance with an interagency agreement between the department and CDFA, they will be informed that redeeming imported empty beverage containers in California for CRV is a crime. They will also be informed their personal information will be provided routinely to DOJ and/or

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other state and local law enforcement agencies for possible investigative follow up to ensure that the materials they are importing are only sold for scrap value to legitimate persons and businesses.

The department strongly believes in the deterrent effect of the reporting and inspection requirements. After implementation, the department estimates there will be a 50-75% reduction in vehicles importing empty beverage containers coming through CDFA border stations, particularly in the 'rental trucks', 'pickups', 'auto' and 'other' categories.

While the data obtained by CDFA to date does not allow for a definitive estimate of the potential impact of imported materials on the Fund, the department has estimated that the impact associated with the 'Rental Trucks' alone is between \$5-7 million annually. The certified weigh master's certificate requirement in the proposed regulations will capture the actual weight of imported beverage container materials which will provide the department with definitive data regarding the total weight of empty beverage container materials being imported which will allow the department to definitively determine the impact and the benefits post implementation.

D. ALTERNATIVES TO THE REGULATION

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not:

The department did not pursue alternatives to adopting regulations to implement these statutory provisions, because any alternatives which do not include establishing reporting and inspection requirements would be inconsistent with the express provisions of § 14596 of the Act.

2. See response to D.1., above.

3. See response to D.1, above.

4. Were performance standards considered to lower compliance costs?

Yes. The intent of this prescribed action (mandate) in section 14596 of the Act is simply to require that specific information associated with the importation of empty beverage container materials will be reported to the department and to provide for an inspection at a CDFA border station of all vehicles importing empty beverage container materials. This information will be used by the department, CDFA and our state and local law enforcement partners to deter, prevent, investigate and/or prosecute individuals and businesses that illegally redeem imported empty beverage container materials for CRV.

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