

FINDING OF EMERGENCY

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

FINDING OF EMERGENCY

The Department is proposing emergency regulations to meet the mandate of SB 96 (Chapter 356, Statutes of 2013) to provide precertification training and examinations to recyclers and processors beginning January 1, 2014.

The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code Sections 14536 (b) (1) and (2) which provides that “**((b)(1)** The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14549.2, 14549.7, 14550, 14561, 14574, 14575, 14585, 14588.1, 14588.2, and 14591. **(2)** Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the director.”

FINDING OF NECESSITY

The Department reviews each application for completeness, performs verification of the data submitted using various databases, and determines if all appropriate documents have been included. Mandated timelines are applied to the initial review of an application (15-working days) and to the final approval once determined complete (45-calendar days). SB 96 extends these timelines from fifteen (15) to thirty (30) days and forty-five (45) to sixty (60) days. These extended timelines do not necessarily mean that the application review and approval period will take those full timeframes to complete.

The Department is proposing emergency regulations to meet the mandates of SB 96 by establishing guidelines for providing precertification training and examination to both new applicants and renewal applicants for certification. The regulations will provide for precertification training and examination to be conducted by Department staff. Applicants for certification must take the training and pass the examination before submitting the application for certification.

In addition, the emergency regulations, under the authority of SB 96 requiring that applicants for certification “meet all other qualification requirements prescribed by the Department”, applicants will be asked to demonstrate readiness to operate a recycling center or processing facility through a “Readiness Plan” included in the certification application. Once certified, the operator of a recycling center or processing facility will be asked to state that all necessary local permits and licenses that are required to legally operate on the site have been obtained.

The California Code of Regulations, Title 14, Division 2, Chapter 5 will amend or add the following sections:

§2010 will be amended to add the definitions of new applicant and renewal applicant and specify the new requirements for precertification for certification applications. These

amendments are necessary to clarify who must meet the new precertification training and examination requirements.

§2012 will be added to outline the new precertification training and examination requirements. These additions are necessary to make specific and implement the new precertification training and examination requirements

§2015 will be amended to include the requirement that applications filed must include verification of completion of the precertification requirements. These amendments are necessary to require new and renewal applicants to provide verification of completion of the new precertification and examination training requirements.

§2030 will be amended to extend the review and approval timelines for applications, require verification of completion of the precertification requirements, and clarify that the review of applications will include assessment of the applicant's readiness. These amendments are necessary to revise the regulations for consistency with the new application timelines established in statute, include additional requirements for the precertification and training and examination, and other qualification requirements prescribed by the Department.

§2040 will be amended to accommodate the extended review timeframes for application submissions. These amendments are necessary to revise the regulations for consistency with the new application timelines established in statute.

§2045 will be amended to update the required information on the application and add the new requirement for a readiness plan. These amendments are necessary to include additional requirements for the precertification and training and examination and other qualification requirements prescribed by the Department.

§2405 will be amended to include notification by the operator of the processing facility of the operation date, acquisition of necessary facility location permits, and any changes to the operator voucher. These amendments are necessary to include other qualification requirements prescribed by the Department to complete the certification of a processor.

§2505 will be amended to include notification by the operator of the recycling center of the operation date, acquisition of necessary facility location permits, and any changes to the operator voucher. These amendments are necessary to include other qualification

requirements prescribed by the Department to complete the certification of a recycling center.

AUTHORITY

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

REFERENCE

Title 14 California Code of Regulations (CCR) amended Sections 2010, 2015, 2030, 2040, 2045, 2405, 2505 and added Section 2012 are intended to implement, interpret and make specific Public Resources Code 14538 and 14539.

INFORMATIVE DIGEST

The California Beverage Container Recycling and Litter Reduction Act, AB 2020/Margolin, Chapter 1290, Statutes of 1986 (Act), created the California Beverage Container Recycling Program (Program) and established the Division of Recycling to administer the Program. The Division of Recycling is within the Department of Resources Recycling and Recovery (CalRecycle/Department). The intent of the Program is to provide increased and convenient beverage container redemption and recycling opportunities for consumers. This is accomplished through the establishment of the California Refund Value (CRV) for eligible beverage containers and working with industry participants such as recyclers and processors who are certified by the Department.

On September 26, 2013, SB 96 (Chapter 356, Statutes of 2013) was signed into law by Governor Brown, amending Sections 14538 and 14539 of the Act pertaining to recyclers and processors. The amendments require that on and after January 1, 2014, applicants for certification and applicants for renewal of certification as a recycling center or processor, must complete precertification training and meet all other qualification requirements prescribed by the Department, including, but not limited to passing an examination. The time period between the signing of the bill and the effective date of the

new mandates does not give the Department sufficient time to establish new regulations through non-emergency means.

The Department finds that an emergency exists to add and amend existing regulations in order to implement statutory mandates of Sections 14538 and 14539 of the Public Resources Code, Division 12.1. The proposed regulations would add or amend sections 2010, 2012, 2015, 2030, 2040, 2045, 2405 and 2505 of the California Code of Regulations (CCR) Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling, Subchapter 2, Articles 1 and 2. The proposed regulations will implement the mandated requirements by the effective of January 1, 2014. The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code Sections 14536 (b) (1) and (2) which provides that **“(b) (2) Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.**

There are no comparable federal regulations or statute to these proposed regulations. The proposed regulation is not inconsistent or incompatible with existing state regulations. The Program is unique to the state of California and there is not a similar program within the state. There are no other matters prescribed by statute applicable to this specific state agency or to any specific regulation or class of regulations.

The Beverage Container Recycling Program has achieved significant success over the past several years, but that success has been accompanied by significant challenges including, most especially, a tremendous growth in workload and a \$100 million, statutorily-driven, structural deficit. To address these challenges, the Program must shift the balance of its efforts from primarily encouraging recycling to an increased emphasis on program fiscal integrity, quality control and better use of information resources. Doing so will (1) help address the structural deficit by reducing losses and

operating costs and (2) help address workload increases through improved efficiency and effectiveness.

The Department certifies applicants wishing to operate recycling centers and processing facilities in order to be reimbursed the CRV paid by them to consumers. Without certification, no reimbursement of CRV is paid to an operator of a recycling facility or processing facility. A Certification is good for five years after which the participant must recertify. As a result, every processor and recycler is certified at least once every five years.

At the present time, the Program's minimum requirement for participation (i.e., for certification) is extremely low and does not require either a vested interest or a demonstrated industry knowledge from the certification applicant. This low threshold encourages the establishment of recycling centers and increases the ease with which consumers can return their containers, but it also makes inefficiency more likely and increases the risk of inappropriate reimbursements (either through willful fraud or through simple operational error). In turn, inefficiency and increased risk may lead to inappropriate payments which may contribute to the structural deficit.

While the Department of Justice (DOJ) has previously estimated container redemption fraud at \$40 million a year, there is no reliable estimate of the total losses to the Fund from fraud and other inappropriate activities. CalRecycle expects to make a reduction in such losses through measures to train and prepare participants in the Program such as recyclers and processors. There are no anticipated direct measurable nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, the promotion of fairness or social equity, or the increase in openness and transparency in business and government associated with these regulations.

SPECIFIC AGENCY STATUTORY REQUIREMENTS

There are no specific agency statutory requirements relevant to this rulemaking.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATE

No additional costs or savings are anticipated for the Department of Resources Recycling and Recovery, Division of Recycling in implementing this emergency regulation package. These emergency regulations place additional requirements mandated by Public Resources Code 14538 and 14539 for recyclers and processors applying for certification.

Fiscal Impact on State Government will be limited to the costs incurred by the Department for staff, equipment and travel. Those costs were appropriated by AB 110, Budget Act of 2013, Chapter 20, Statutes of 2013.

The proposed emergency regulations will not result in either costs or savings to any other State Agency, local agencies or school districts. Further, these proposed emergency regulations will not result in any non-discretionary cost or savings to any local agencies, nor will they result in cost or savings to federal funding to the State.

DOCUMENTS RELIED UPON

To calculate potential cost impacts on businesses and individuals, the Department used information provided by the Bureau of Labor Statistics, in a report entitled "County Employment and Wages in California – Fourth Quarter 2012". This document is identified in the STD 399 Economic and Fiscal Impact Narrative and can be found here: <http://www.bls.gov/ro9/qcewca.pdf>

NOTICE OF REGULATORY ACTION

The Department of Resources Recycling and Recovery has complied with the requirement to provide notice of the proposed emergency rulemaking pursuant to Government Code Section 11346.1(a)(2).

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

A copy of the memorandum transmitting the proposed emergency text and the proposed Statement of Emergency to interested parties is included in the emergency rulemaking file.