

FINDING OF EMERGENCY

INFORMATIVE DIGEST

The Department of Resources Recycling and Recovery (department), Division of Recycling (division), is responsible for administering the California Beverage Container Recycling and Litter Reduction Act (Act) (Pub. Res. Code, Division 12.1 (commencing with section 14500)) and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

Since the inception of the program there have been unscrupulous individuals and entities defrauding the Fund by redeeming ineligible 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.

Section 14595 of the Act declares that the redemption of imported empty beverage container material at certified recycling centers and processors for California Redemption Value presents a significant threat to the integrity of the Fund. Furthermore, section 14595.5(a)(1) of the Act 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.

The division proposes adopting emergency regulations to implement Chapter 8.5 of the Act (Pub. Res. Code §§ 14595-14599), particularly the reporting and inspection provisions for imported empty beverage container material 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.)) The proposed emergency regulations include 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 require that specific information associated with the importation of empty beverage container materials be reported to the department and that all vehicles importing empty beverage container material above certain weights will be inspected at a California Department of Food and Agriculture (CDFA) quarantine inspection station (border station). The information gathered will be used by the department, CDFA, and other law enforcement agencies to deter, prevent, investigate, and prosecute individuals and businesses that illegally redeem imported empty beverage container materials for refund value and other recycling program payments.

The proposed regulations apply to any person importing more than 25 pounds of aluminum, bimetal, or plastic empty beverage container material, or more than 250 pounds of glass empty beverage container material, in a motor vehicle and will require the following:

- Entering California only through an open and staffed CDFA border station and declaring empty beverage container material is being imported.

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

FINDING OF EMERGENCY

- Submitting to a vehicle inspection conducted by CDFA border station agents or other appropriate officials and securing a Proof of Inspection (POI) document.
- Completing an Imported Material Report (IMR) and presenting it to a CDFA border station agent upon seeking entry into California. The report requires a variety of information about the material, point of origin, destination, vehicle, driver, trucking company, and receiver. An online version of the IMR will be posted on the department's web site and hardcopies will be available at all CDFA border stations.
- Providing a copy of a certified weigh master certificate, when the weight of the imported empty beverage container material is 100 pounds or more.
- Retaining possession of both the IMR and POI until the load is delivered to the destination indicated on the IMR.
- Prohibiting delivery of imported empty beverage container materials to a registered curbside program or a certified recycling center, dropoff or collection program, or community service program. Individuals will not be restricted from delivering imported materials to a certified processor, or to a junk dealer as defined in the Business and Professions Code beginning at Section 21600. Although imported material is ineligible for refund value and other program payments, certified recycling centers have been permitted to purchase the material for its scrap value. That will no longer be allowed under the proposed regulations.
- Requiring that aluminum beverage containers sold to junk dealers be handled as nonferrous material subject to the laws governing scrap metal and alloys in accordance with applicable sections of the Business and Professions Code beginning at Section 21600.
- Restricting any person from taking delivery in California of any empty beverage container material, the person knew, or should have known, was imported into CA, unless the material is accompanied by a POI, IMR, and certain other supporting documents.
- Maintaining designated records (i.e., POI, IMR, weight ticket) and making them available for review by the department for a period of five years following their preparation.

FINDING OF NECESSITY

The division finds that, in order to comply with the mandate found 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.)), it is necessary to adopt emergency regulations implementing the reporting and inspection requirements for imported empty beverage container material found in sections 14595.5 and 14596 of the Act.

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

FINDING OF EMERGENCY

FINDING OF EMERGENCY

The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code Sections 14599, which reads as follows:

The department may adopt emergency regulations to implement this chapter. 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, any emergency regulations adopted pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law, and shall remain in effect until revised by the director. (Emphasis added)

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code subsections 14530.5, 14536(b), and 14599.

REFERENCE

Amended Title 14 California Code of Regulations (CCR) Sections 2000, 2085, and 2501, and added Title 14 CCR Sections 2830, 2831, 2831.1, 2831.2, 2831.3, 2831.4, 2831.5, 2832, 2833, 2834, and 2835 are intended to implement, interpret and make specific Public Resources Code Chapter 8.5, including sections 14595.5 and 14596.

LOCAL MANDATE

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

COSTS

Both costs and savings are anticipated for the Department of Resources Recycling and Recovery, Division of Recycling, in implementing this emergency regulation package.

These emergency regulations place new reporting and inspection requirements on individuals and business importing empty beverage container materials into California. In addition, these emergency regulations prohibit delivery of imported empty beverage container materials to a registered curbside program or a certified recycling center, dropoff or collection program, or community service program. There are economic impacts to businesses associated with the proposed requirements and prohibitions.

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

FINDING OF EMERGENCY

Additional detail regarding costs and savings can be found in the following documents which accompany this Finding of Emergency:

- Economic and Fiscal Impact Statement (STD 399)
- Addendum to Economic and Fiscal Impact Statement (STD 399)
- Fiscal Impact Estimate

This notice and other documents related to these emergency regulations may be accessed via the department's website at www.calrecycle.ca.gov/Laws/Rulemaking/.

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 for the State.

NOTICE OF EMERGENCY REGULATORY ACTION

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

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.