

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

The Department of Resources Recycling and Recovery (CalRecycle/Department) is proposing emergency regulations to implement the statutory provisions of Public Resources Code (PRC) Section 14571.9 that establish the Pilot Projects Program in the California Beverage Container Recycling Program (BCRP). The Department seeks to add regulations commencing with Section 2750, Subchapter 9.5, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR).

The Department 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.

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 recommendations, objections, support, or opposition for the proposed amendment, should indicate the amended section to which the comment or comments are directed.

Comments on the proposed emergency regulations must be submitted directly to OAL within five calendar days of when OAL posts the proposed emergency regulations on the OAL web site. Comments on proposed emergency regulations should be submitted to the OAL Reference Attorney by mail to 300 Capitol Mall, Suite 1250, Sacramento, California 95814, by fax to (916) 323-6826, or by e-mail to staff@oal.ca.gov. When you submit a comment to OAL, you must also submit a copy of your comment to CalRecycle to DORRegulations@CalRecycle.ca.gov or to:

Sharon Siozon
Pilot Project Emergency Regulations
Department of Resources Recycling and Recovery, Division of Recycling
801 "K" Street, MS 19-01
Sacramento, CA 95814

OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency regulation currently under OAL review and include the topic of the emergency.

The public comment period will commence on March 22, 2019, when the emergency regulations are posted on OAL's website. The public comment period will close on March 27, 2019. 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 March 27, 2019. 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.

Copies of the text, the Finding of Emergency, and all of the information upon which this proposal is based are available upon request and at our website: www.calrecycle.ca.gov/Laws/Rulemaking/. The rulemaking file is also available for review during normal business hours at the Department, 801 "K" Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Sharon Siozon, at (916) 322-1760 if you wish to review the rulemaking file in person. General or

substantive questions regarding this file may also be directed to Sharon Siozon. The back-up agency contact person for this rulemaking file is Benjamin Grimes, who may be contacted at (916) 327-0089. Any technical inquiries will be referred to the appropriate staff to ensure a prompt response.

Attached to this notice are the proposed regulatory text and the Finding of Emergency. These documents will be posted on CalRecycle's website at the following address: <http://www.calrecycle.ca.gov/Laws/Rulemaking/>.

If you have any questions regarding this proposed emergency action, please contact Sharon Siozon at (916) 322-1760 or sharon.siozon@calrecycle.ca.gov.

FINDING OF NECESSITY

The Department finds that an emergency exists to amend existing regulations in order to implement statutory mandates of PRC section 14571.9. The proposed regulations would add sections 2750, 2752, 2754, 2756, 2758, 2760, 2762, 2764, 2766, 2768, 2770, 2772, 2774, 2776, and 2778 of the CCR Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling, Subchapter 12, Article 2. The adoption of these regulations is deemed to be an emergency pursuant to PRC section 14571.9 (k), which provides that: "The department may adopt emergency regulations for the purpose of implementing this section. 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. 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 amended or repealed by the department or January 1, 2022, whichever comes first."

The California Beverage Container Recycling Program (BCRP) was established as a California Redemption Value (CRV) deposit and return system to create convenient beverage container recycling opportunities in the state. Recycling centers that redeem CRV containers located throughout the state provide opportunities for consumers to return their CRV beverage containers to claim their refund. The Department works to create and maintain a marketplace that provides consumers with convenient recycling opportunities.

SB 458 (Wiener, Chapter 648, Statutes of 2017) became law effective October 10, 2017 authorizing the Department to approve up to five pilot projects proposed by jurisdictions to provide convenient beverage container redemption opportunities in convenience zones unserved by a recycling center. These pilot projects are authorized until January 1, 2022.

Convenience zones are typically the area within a one-half mile radius of a supermarket. Recycling centers who operate at a supermarket site are eligible to receive supplemental payments in the form of handling fees. In a convenience zone where no recycling location has been established, a dealer, as defined in PRC Section 14510, within that zone has the responsibility of either redeeming beverage containers in the store, or paying to the Department \$100 per day until a recycling location is established. Dealers will be exempt from this requirement if a pilot project is located in that convenience zone.

Current statute and regulations provide the standards and requirements for recycling centers. Unlike current recycling centers, pilot project recyclers may operate anywhere within a convenience zone to become eligible for handling fees and may operate a mobile collection program. A pilot project recycler cannot participate on their own; they must apply through an approved jurisdiction and pilot project. There are no regulations in place to provide the application process for jurisdictions applying for pilot projects.

These regulations are necessary to implement, clarify and make specific the new statute.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code (PRC) sections 14530.5(b), 14536, and 14571.9(k).

REFERENCE

The addition of these emergency regulations commencing with Section 2750 of Title 14, Division 2, Chapter 5, Subdivision 9.5 of the California Code of Regulations, implements, interprets and makes specific PRC 14571.9.

INFORMATIVE DIGEST

Summary of Existing Laws

The California Beverage Container Recycling and Litter Reduction Act, AB 2020/Margolin, Chapter 1290, Statutes of 1986 (Act), created the BCRP and established the Division of Recycling to administer the BCRP. PRC Sections 14538, 14571, and 14585 certify recycling centers, determine if a convenience zone is served, and provide the basis for handling fee payment eligibility. The regulations implementing the Act provide the framework for the application process for certifying recycling centers and operational standards for recycling centers.

Other Federal and State Laws

There are no federal regulations or statutes comparable to these proposed regulations. The BCRP 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.

Consistency and Compatibility with State Regulations

The proposed regulations are not inconsistent or incompatible with existing state regulations.

Policy Statement Overview

The intent of the BCRP is to provide increased and convenient beverage container redemption and recycling opportunities for consumers (PRC Section 14501(e)). It is also the intent of the Act that the responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors and the Department (PRC Section 14501(g)).

In order to meet the objectives of the BCRP, the Department certifies recycling centers where consumers can redeem their eligible CRV beverage containers for refund (PRC Section 14538). The Act establishes convenience zones within a one-half mile radius of a supermarket to provide convenient redemption opportunities for consumers (PRC Section 14509.4). Recycling centers at supermarket sites are eligible to receive handling fee payments from the Department (PRC Section 14585).

In recent years, several recycling centers have closed in part because some locations and municipalities do not want to host recycling centers. SB 458 (Wiener, Chapter 648, Statutes of 2017) was signed into law on October 10, 2017 authorizing CalRecycle to approve up to five pilot projects to improve consumer redemption opportunities. Once approved, these pilot projects are authorized until January 1, 2022. Jurisdictions will submit applications to CalRecycle to operate pilot project recyclers in their proposed pilot project area (PRC Section 14571.9 (a)(1)). Pilot project recyclers are subject to the statutes and regulations pertaining to recycling centers unless otherwise specified (PRC Section 14571.9(a)(2)) and are eligible to receive payments (PRC Section 14571.9(j)). Statute authorizes the Department to prescribe the elements included in the pilot project proposal (PRC Section 14571.9(f)(6)) and the factors the Department may consider in approving pilot projects (PRC Section 14571.9(h)(7)). In order to implement the pilot

projects, regulations are necessary to clarify the specific and unique requirements that distinguish this program from the requirements of recyclers operating under current law. The proposed emergency regulations will provide:

- a) Definitions specific to pilot projects;
- b) Clarification on the pilot project and pilot project recycler application process;
- c) Selection criteria for pilot projects;
- d) Operational standards for pilot project recyclers;
- e) Reporting and recordkeeping requirements; and
- f) Handling fee payments for pilot project recyclers.

Benefits of the Proposed Regulations

Pilot projects would allow convenience zones currently unserved by a recycling center to be served by a pilot project recycler. This would create more opportunities for consumers to redeem their beverage containers. Additionally, pilot projects may include new operational models, allowing for the exploration and evaluation of new methods of redemption. The pilot projects encourage the cooperation of jurisdictions, recyclers, and dealers to provide mutually beneficial solutions to improve and modernize the BCRP. The strength of the BCRP and its participants ultimately benefit the environment through the collection of beverage containers for recycling.

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

There are no significant fiscal impacts from these regulations. CalRecycle could potentially lose program revenue from a loss of Section 14571.6(b) payments from dealers who are relieved of these payments due to the establishment of a pilot recycling

center program. These payments are not considered normal departmental revenue as the payment is a fee to dealers, and is therefore not considered a fiscal cost to the department because it is not a typical revenue stream. The intent of these fees is to encourage the establishment of a recycling center in that convenience zone. The presence of a pilot project recycler in that convenience zone (that causes the dealer's exemption from responsibility) meets this intent.

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

None.