

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
EMERGENCY RULEMAKING ACTION
PILOT PROJECT EXPANSION REGULATIONS

NOTICE OF PROPOSED EMERGENCY ACTION

The Department of Resources Recycling and Recovery (CalRecycle/Department) is proposing amendments to the following sections under Article 1, Subchapter 9.5, Chapter 5, Division 2, Title 14 of the California Code of Regulations: 2750, 2752, 2754, 2756, 2758, 2762, 2764, 2766, 2768, 2770, 2772, 2774, 2776, 2778, and the addition of section 2759.

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 (OAL), 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 OAL, OAL 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 BevContainerRegs@CalRecycle.ca.gov or to:

Sharon Siozon

Pilot Project Program 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 January 25, 2022 when the emergency regulations are posted on OAL's website. Written comments should be sent to the Department and received before the close of the public comment period, no later than midnight on February 1, 2022. 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 the information upon which this proposal is based are available upon request and at our website accessible at the following internet link: [CalRecycle Proposed 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 rulemaking documents are posted on CalRecycle's website at the following internet link: [CalRecycle Proposed Rulemaking](#).

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.

If you have any questions regarding this proposed emergency action, please contact Sharon Siozon at (916) 322-1760 or BevContainerRegs@CalRecycle.ca.gov. The backup contact person is Vivian Cruz at (916) 341-6581 or BevContainerRegs@CalRecycle.ca.gov

FINDING OF EMERGENCY

The Department of Resources Recycling and Recovery (CalRecycle/Department) seeks to amend and to add to the regulations commencing with Article 1, Section 2750, Subchapter 9.5, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR).

The amendment of these regulations is deemed to be an emergency pursuant to Public Resources Code Section 14571.9(j), which provides that: "The department may adopt emergency regulations for the purpose of implementing this section. 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. Emergency regulations adopted under 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, 2027, whichever comes first."

AUTHORITY

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

REFERENCE

The amendment 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, clarifies, and make specific PRC 14571.9.

FINDING OF NECESSITY

The Department finds that the proposed regulations are needed to amend existing regulations in order to implement statutory mandates of PRC section 14571.9. The proposed regulations would amend sections 2750, 2752, 2754, 2756, 2758, 2760, 2762, 2764, 2766, 2768, 2770, 2772, 2774, 2776, and 2778 and add section 2759 to the CCR Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling, Subchapter 9.5, Article 1. The amendment and adoption of these regulations is deemed to be an emergency pursuant to PRC section 14571.9 (j).

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 redemption opportunities for consumers to return their CRV beverage containers to claim their refund.

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.

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.

The Office of Administrative Law approved emergency regulations to implement PRC section 14571.9 on April 2, 2019. These proposed emergency regulations will make changes to the existing regulations to conform to the statutory amendments from AB 54 and AB 148.

AB 54 (Ting, Chapter 793, Statutes of 2019) amended PRC section 14571.9 to allow pilot project recyclers to operate and be eligible for handling fees anywhere within the pilot project area. Under prior law they were limited to operating within a convenience zone. The date when a pilot project application must meet the conditions for eligibility was amended from October 12, 2019 to the date of the pilot project application.

AB 148 (Committee on Budget, Chapter 115, Statutes of 2021) became law effective July 22, 2021 making the following changes to PRC section 14571.9:

- Increases pilot project spots from 5 to 10
- Extends inoperative date of the pilot project program from July 1, 2022 to June 30, 2026
- Extends the timeframe for CalRecycle to approve pilot projects from January 1, 2022 to June 30, 2025

- Extends effective date of emergency regulations from July 1, 2022 to January 1, 2027

In addition, CalRecycle is proposing the following changes based on input from the participants in the pilot project program and other interested parties:

- **Allow approved jurisdictions to expand their membership.** Approved jurisdictions have expressed interest in expanding their pilot project area to include other municipalities that lack CRV beverage container redemption opportunities and would be able to serve their communities through the flexibility and support the pilot project program provides. The proposed regulations add a supplementary application process to allow jurisdictions to expand its membership upon approval by CalRecycle.
- **Increase the amount a consumer may redeem per day based on the recycler model.** Pilot project recyclers that operate a staffed “buyback” model will be able to accept higher amounts of material from a consumer consistent with similar models that operate outside of the pilot project program. For consistency and upon request from recyclers, CalRecycle is making this change for this model only. For other models, a lower load limit is more appropriate because of how much material the model can store and because they are new models, CalRecycle is collecting more data to determine the appropriate “load limit” levels for these alternative recycling models.
- **Open the jurisdiction eligibility to tribal governments.** The regulations that established the pilot project program limited eligibility to jurisdictions because SB 458 based the pilot projects on convenience zones. AB 54 removed this restriction opening the door to consider other locations that can host a pilot project recycler outside of a convenience zone.

INFORMATIVE DIGEST

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.

SB 458 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. CalRecycle adopted emergency regulations on April 2, 2019 as authorized by PRC section 14571.9 to implement the pilot project program. These emergency regulations were approved by OAL on April 2, 2019 to be effective until January 1, 2022.

AB 54 and AB 148 made substantive changes to the statute necessitating the amendment of existing regulations to conform to current law. AB 148 extended the effective date of emergency regulations promulgated under the authority of 14571.9 through January 1, 2027 (PRC section 14571.9(j)). AB 54 allowed pilot project recyclers to operate outside of convenience zones and changed the eligibility criteria, for purposes of applying for a pilot project, to be based on eligibility at the time of the application. AB 148 expanded the number of pilot projects and extend the sunset date of the program from July 1, 2022 to June 30, 2026.

OTHER FEDERAL AND STATE LAWS

There are no federal regulations or statutes comparable to these proposed regulations. The proposed regulations are not inconsistent or incompatible with existing state 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. 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)).

One of the primary objectives of the pilot project program is to solve gaps in CRV redemption availability through partnership with the state and local jurisdictions to find locations for recycling centers and mutually beneficial collaboration between jurisdictions and the recyclers. The other objective is for CalRecycle to use the pilot project program as a means to explore different ways to meet the goals of the Act that can be adopted statewide on a permanent basis. The proposed regulatory amendments that expand jurisdictional membership and types of jurisdictions support these objectives by opening the door for wider participation and diversity of jurisdictions. Additionally, allowing buyback types of pilot project recyclers to have higher load limits provides CalRecycle with a means to study different load limit levels based on the recycler model type.

BENEFITS OF THE PROPOSED REGULATIONS

Pilot projects allow convenience zones currently unserved by a recycling center to be served by a pilot project recycler. Aligning with the statutory amendments to operate outside of convenience zones and expanding pilot project jurisdiction participation would create more opportunities for consumers to redeem their beverage containers. Pilot projects include new operational models that allow for the exploration and evaluation of new methods of redemption in more locations. 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. Statute established the Pilot Project Program and emergency regulations have been adopted and implemented. The proposed changes in this emergency rulemaking will align the existing regulations with recent amendments to the statute. These proposed regulations would also allow an expansion of an approved jurisdiction through a supplemental approval process; add eligibility to other entities to apply as a pilot project jurisdiction; and increase the consumer redemption load limit for staffed pilot project recycler buyback locations. There will not be a significant fiscal impact resulting from these proposed amendments. Allowing pilot project jurisdictions to expand the area they serve and opening eligibility to other types of jurisdictional entities falls within the authorizing statute and could

provide relief to areas that need alternative means to serve areas of the state that are lacking in beverage container recycling opportunities.

ECONOMIC IMPACT ESTIMATE

There are no significant statewide adverse economic impacts from these regulations that would directly affect business. The Pilot Project Program offers opportunities for pilot project recyclers to operate with greater flexibility with the support and cooperation from the jurisdictional authority. It also provides relief from dealers in the pilot project area who may otherwise be in an unserved convenience zone with the responsibility of redeeming in store or paying a \$100 per day.

DOCUMENTS RELIED UPON

NONE