

Department of Resources Recycling and Recovery, Division of Recycling
AB 793 Plastic Content Reporting and Compliance Permanent Regulations

INITIAL STATEMENT OF REASONS

Introduction

The Department of Resources Recycling and Recovery (CalRecycle), Division of Recycling (Division) administers the California Beverage Container Recycling Program (BCRP) which was created through the California Beverage Container Litter Reduction Act (Public Resources Code (Pub. Res. Code) 14500 et seq.) as a California Redemption Value (CRV) deposit and return system to reduce the beverage container component of litter and create convenient beverage container recycling opportunities in the state. CalRecycle is tasked with ensuring consumers throughout the state have convenient recycling options to return their CRV beverage containers and claim their deposit. CalRecycle is also tasked with enforcing minimum recycled content mandates on glass food and drink containers manufactured in California, and more recently, a minimum postconsumer recycled content standard for plastic beverage containers sold in California.

AB 2530 (Chapter 861, Statutes of 2016) requires a manufacturer of a beverage (beverage manufacturer) sold in a plastic beverage container subject to CRV to report to CalRecycle the amount of virgin plastic and postconsumer recycled (PCR) plastic used by the manufacturer for plastic CRV-eligible beverages sold in the state during the previous calendar year. CalRecycle is required to post the reported information on CalRecycle's public website annually.

AB 793 (Chapter 115, Statutes of 2020) amended Pub. Res. Code section 14549.3, which was introduced by AB 2530, and added Pub. Res. Code sections 14547, which places the primary responsibility for establishing minimum PCR content standards for plastic beverage containers subject to CRV on beverage manufacturers as defined in Pub. Res. Code section 14506. AB 793 requires the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer, as defined by Pub. Res. Code section 14506, to contain on average a minimum 15 percent PCR plastic beginning in 2022, increasing to 25 percent in 2025, and settling at 50 percent in 2030.

Beverage manufacturers who fail to meet the minimum PCR standard set by AB 793 may face administrative penalties based on the shortfall of the weight of PCR plastic needed to reach the minimum standard. Per Pub. Res. Code section 14547(a)(4)(A), beginning January 1, 2025, the director of CalRecycle may, on an annual basis, review and adjust the minimum PCR content standard required. Pub. Res. Code section 14547(a)(4)(A) further specifies that the director's review may be initiated by the director or at the petition of the beverage manufacturing industry not more than annually. The director shall not adjust the minimum PCR content standard above the minimum

standard specified in Pub. Res. Code section 14547(a)(4)(B).

Problem Statement

The passage of AB 793 created new requirements that are not accounted for in CalRecycle's existing regulations. CalRecycle cannot rely merely on statutory interpretation to enforce these new requirements as the statutory language lacks the necessary detail for implementation.

CalRecycle is seeking to permanently establish regulations to clarify the language introduced by AB 793 and implement the reporting requirements and penalties described above. Specifically, CalRecycle proposes to amend California Code of Regulations (CCR), Title 14, Division 2, Chapter 5, section 2000 to adopting definitions that are needed to clarify the statute, section 2100 to address compliance related to the new reporting requirements of AB 793, section 2235 to address recordkeeping, and section 2240 to address reporting and penalties assessed on beverage manufacturers for failing to meet the minimum PCR plastic standard. CalRecycle also proposes adopting 14 CCR section 2250 in order to address the reduction of administrative penalties via a corrective action plan, section 2260 to address the handling of a petition requesting a reduction in the minimum content threshold, section 2265 to address a request for a reduction in the assessment of administrative penalties and sections 2780, 2785, 2790, and 2795 to clarify reporting requirements associated with two new program participants (plastic material reclaimers and manufacturers of postconsumer recycled plastic) with reporting responsibilities set by AB 793.

The proposed regulations provide the form and manner for completing mandated reporting by beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic specified in Pub. Res. Code section 14549.3. The proposed regulation includes recordkeeping requirements of minimum PCR content documentation for beverage manufacturers to facilitate reporting the content of virgin and PCR plastic specified in Pub. Res. Code section 14549.3(a). The proposed regulation also includes definitions of the reporting entities, (plastic material reclaimer and manufacturer of postconsumer recycled plastic), along with the definitions of the goods (bottle-grade plastic and food-grade plastic) whose production volume they are required to report, as specified in Pub. Res. Code sections 14549.3(b) and (c).

The proposed regulation provides the procedures and information required for an association of a group of beverage manufacturers to petition CalRecycle to reduce the PCR plastic minimum content standard as specified in Pub. Res. Code section 14547(a)(4)(A). Furthermore, the proposed regulation provides procedures and information required, which includes a corrective action plan, that may be undertaken by individual beverage manufacturers to reduce administrative penalties as specified in Pub. Res. Code section 14547(e).

Specific purpose of, and rationale for, each proposed adoption or amendment

§ 2000. DEFINITIONS

Section 2000 subsection (a)(3.5). This proposed new subsection adds a definition for the term “Bottle-grade”.

The term “Bottle-grade” is introduced in Pub. Res. Code section 14549.3(c) and AB 793 without definition of statute. CalRecycle adopts this definition so that entities required to report the amount in pounds of “bottle-grade” material will have a definition to use to differentiate their material for reporting.

CalRecycle used this definition to clarify that bottle-grade is a subset of food-grade material, a distinction that is not clear in Pub. Res. Code section 14549.3(c). While not all food-grade material can be used for the manufacturing of plastic beverage containers, CalRecycle is defining that all bottle-grade material must be food-grade for the manufacturing of plastic beverage containers. The language used to define this term was modeled from language conventionally utilized by the plastic industry.

Section 2000 subsection (a)(24.5). This proposed new subsection adds a definition for the term “Food-grade”.

The term “Food-grade” is introduced in Pub. Res. Code section 14549.3(c) and AB 793 without definition in statute. CalRecycle adopts this definition so that entities required to report the amount in pounds of food-grade material will have a definition to use to differentiate their material for reporting.

CalRecycle used this definition as it is flexible but still descriptive of the material that needs to be reported. The language used to define this term was modeled from language conventionally utilized by the plastic industry.

Section 2000 subsection (a)(29.9). This proposed new subsection adds a definition for “manufacturer of postconsumer recycled plastic.”

CalRecycle is adopting this definition of Manufacturer of Postconsumer Recycled Plastic because this term lacks clarity in Pub. Res. Code section 14549.3(a) and AB 793.

CalRecycle adopts this definition to further clarify the plastic product sold by these manufacturers. By adding the term “precursor” into the definition, there is more clarity in that these products are the feedstock for material used in the manufacturing of plastic beverage containers and is modeled from language conventionally utilized by the plastic industry.

Section 2000 subsection (a)(34.1). This proposed new subsection adds a definition for “plastic material reclaimer”.

CalRecycle is adopting this definition of Plastic Material Reclaimer because the term is lacking clarity in Pub. Res. Code section 14549.3 and AB 793. The purpose of this definition is to ensure a true comprehensive reporting of empty plastic beverage containers reported to a manufacturer of postconsumer recycled plastic in the state.

Section 2000 subsection (a)(34.2). This proposed new subsection adds a definition for “Post-Industrial Recycled Material”.

The term “Post-Industrial Recycled material” is used here to differentiate material that is considered recycled as part of an industrial process as opposed to falling under the category of “postconsumer recycled material”.

To maintain consistency with the intent of AB 793, the definitions are used to qualify a material type (plastic) to clearly isolate postconsumer recycled plastic, the basis of the minimum content standard, from post-industrial and virgin plastic used in the manufacture of plastic bottles. This clarification is required to ensure that the minimum content goals are clear and align with the “closing the loop” intent of AB 793.

Section 2000 subsection (a)(34.3). This proposed new subsection adds a definition for “Postconsumer Recycled Material.”

The term “postconsumer recycled plastic” presented in Pub. Res. Code section 14547 lacked the clarity required by industry to differentiate this material from other material used in the supply chain of manufacturing plastic bottles. Consequently, this proposed new subsection contains definitions for two additional terms, “postconsumer recycled material” and “post-industrial recycled material” which are based on the definitions used by the Association of Plastic Recyclers.

To maintain consistency with the intent of AB 793, the definitions are used to qualify a material type (plastic) to clearly isolate postconsumer recycled plastic, the basis of the minimum content standard, from post-industrial and virgin plastic used in the manufacture of plastic bottles. This clarification is required to ensure that the minimum content goals are clear and align with the “closing the loop” intent of AB 793.

§2100. PENALTIES AND INTEREST CHARGES

Section 2100, subsection (a) is amended to include 14549.3 in the list of sections of the California Beverage Container Litter Reduction Act. This amendment allows the failure to submit the plastic beverage container virgin and postconsumer resin report, the plastic material reclaimer report, and the manufacturer of postconsumer recycled plastic report enforced through CalRecycle’s Notice of Violation assessment of civil penalties process.

This amendment permits CalRecycle to use less than the maximum penalty for the enforcement of failing to file a report required pursuant to Pub. Res. Code section 14543.9. Without this amendment, CalRecycle will only be able to impose civil penalties pursuant to Pub. Res. Code section 14591.1 of one-thousand dollars (\$1000) or more. With this amendment, CalRecycle will be able to scale enforcement penalties from zero

dollars (\$0) to one-thousand dollars (\$1000) or more using the factors for determination of a penalty found in Pub. Res. Code section 14591.1(e).

§ 2235. RECORDKEEPING

CalRecycle proposes to amend 14 CCR section 2235 to add a recordkeeping requirement for the minimum content documentation. Pub. Res. Code section 14549.3(a) requires beverage manufacturers to report to CalRecycle the amount of virgin plastic and PCR plastic used by the beverage manufacturer in plastic beverage containers.

Section 2235, subsection (e). This proposed new section adds a new category of documents required to be maintained by beverage manufacturers to substantiate their reporting of PCR plastic in proposed section 2240, subsection (b). The additional category of documents is made further specific by providing examples of suitable supporting documents in paragraphs (1) through (5) of subsection (e) of section 2235. By providing these examples (e.g.: material data sheets, purchase records, manifests, bills of lading, etc.), the regulation makes clear as to which documents will be relied upon by CalRecycle to establish the accuracy of the reporting amount and removes industry confusion.

CalRecycle recognizes that information to substantiate the reporting of PCR plastic may not be universally found in standardized forms or documents and seeks to assure industry participants that a wide range of documents will be considered when establishing the accuracy of the reported PCR plastic content of a container.

Section 2235, subsection (e)(1) specifies Material Data Sheets and purchase records because these documents establish the kind of plastic beverage containers and beverage container components purchased or used by a beverage manufacturer.

Section 2235, subsection (e)(2) specifies Manifests, Bills of Lading, or other sales documents because these documents may also describe the PCR plastic content of the container.

Section 2235, subsection (e)(3) specifies Purchase records of PCR plastic and virgin plastic raw materials because CalRecycle may also be able to substantiate PCR material content of beverage containers from this information.

Section 2235, subsection (e)(4) specifies Certificates issued by a container manufacturer to a beverage manufacturer because the PCR content of a container may be described in separate documentation from purchase or sales records.

Section 2235, subsection (e)(5) is a more generalized, less specific, set of documents that a beverage manufacturer may use to substantiate the PCR plastic content of containers because CalRecycle recognizes that due to the diversity of beverage manufacturers and how they conduct transactions with container manufacturers, their supporting documentation is not standardized across the industry and the substantiating

evidence of PCR plastic content may be found in transactional documents that would not fall under the narrower categories already listed.

Beverage manufacturers may be subject to administrative penalties for failing to meet the minimum PCR plastic content requirements if they do not qualify for an exemption under Pub. Res. Code 14547(i). Accuracy in reporting will ensure that the administrative penalties are correctly assessed. The range of documents outlined in section 2235, subsections (e) (1)-(5) are necessary to establish traceability and accountability between reports submitted pursuant to Pub. Res. Code section 14549.3(a) and may be subject to audit. This list of categories of documents will allow a beverage manufacturer to rely on a large pool of documents to substantiate any reports of postconsumer recycled content in their plastic beverage containers.

§ 2240. REPORTING

CalRecycle proposes to amend 14 CCR section 2240 by adding subsection (b) to identify the information contained in the plastic beverage container virgin and postconsumer resin report, which is required to be completed annually by beverage manufacturers, as defined by Pub. Res. Code section 14506, who sell beverages in plastic beverage containers subject to CRV, pursuant to Pub. Res. Code section 14549.3(a). Pub. Res. Code section 14549.3(a) was introduced by AB 2530 (Chapter 861, Statutes of 2016) and was later amended by AB 793 (Chapter 115, Statutes of 2020) which establishes minimum PCR plastic content standards for plastic beverage containers and generally subjects beverage manufacturers to civil penalties for not meeting that standard as well as providing exemptions or reductions to civil penalties specified in Pub. Res. Code sections 14547(a)(4) and 14547(e).

The purpose of the plastic beverage container virgin and postconsumer resin report specified in this proposed regulation is to monitor beverage manufacturer compliance in meeting the minimum PCR plastic content standard and to enable CalRecycle to assess the progress towards using plastic beverage containers that contain 100 percent PCR plastic pursuant to Pub. Res. Code 14547(j).

Section 2240, subsection (a). This existing regulation is amended for renumbering purposes to organize existing regulatory language for the submission of Beverage Manufacturer Reports under subsection (a) and to incorporate a new subdivision (b) in this section.

This is a non-substantive change.

Section 2240, subsections (a)(1)(A), (B), (C), (D), (E), (F), (G). Existing subsections (a)(1) through (7) are renumbered to the proposed new renumbering of (1)(A) through (G) to accommodate the addition of a new subsection (b).

These are non-substantive changes.

Section 2240, subsection (b). This proposed new subsection is added to existing 2240 to repeat the statutory mandate for beverage manufacturers to submit information to

CalRecycle regarding the amount in pounds and by resin type the beverage manufacturer used in plastic beverage containers for sale in the state and to ensure that the reporting meets the applicable requirements of section 2090 of these regulations concerning requirements for filing and to allow CalRecycle to reject any incomplete report.

CalRecycle used this language to establish that this report will satisfy the requirements of Pub. Res. Code section 14549.3(a).

Section 2240, subsection (b)(1). This proposed new subsection is added to name the plastic beverage container virgin and postconsumer resin report.

This provision organizes the required information in subordinate subparagraphs for ease of identifying the needed the elements for a complete report.

Section 2240, subsection (b)(1)(A). This proposed new subsection requires the beverage manufacturer's name and unique identification number, which is the same identification number assigned to the beverage manufacturer for the purposes of reporting and paying the processing fee specified under Pub. Res. Code section 14575.

This allows CalRecycle to identify and monitor the beverage manufacturer's compliance with the mandated completion and submittal of the plastic beverage container virgin and postconsumer resin report as specified by Pub. Res. Code section 14549.3(a). Additionally, this will help to organize all information related to a unique beverage manufacturer.

Section 2240, subsection (b)(1)(A)(i). This proposed new subsection requires that a separate plastic beverage container virgin and postconsumer resin report must be submitted for each beverage manufacturer assigned a unique identification number; CalRecycle is treating a beverage manufacturer with a unique identification number as a separate entity, as consistent with the registration requirement specified in section 2231 of these regulations, to facilitate compliance and monitoring pursuant to Pub. Res. Code section 14549.3(a).

This means that each beverage manufacturer must report and cannot rely on another beverage manufacturer or entity to report on that registered beverage manufacturer's behalf, which is consistent with Pub. Res. Code section 14549.3(a) and necessary so CalRecycle can easily and accurately identify each individual beverage manufacturer.

Section 2240, subsection (b)(1)(B). This proposed new subsection requires the reporting period, which is a calendar year, because Pub. Res. Code section 14549.3(a) specifies that the plastic beverage container virgin and postconsumer resin report must be submitted annually, on or before March 1 of each year, as specified in proposed section 2240, subsection (b)(2), covering the weight of virgin and PCR plastic in plastic beverage containers sold in the previous year.

By indicating the reporting period, CalRecycle can properly organize these reports and attribute them to the appropriate reporting period. Pub. Res. Code section 14547(a) establishes different standards that a beverage manufacturer must meet depending on which calendar year the sales of plastic beverage containers took place.

Section 2240, subsection (b)(1)(C). This proposed new subsection requires the total weight, in pounds, of virgin plastic contained in the body, cap, and label of all plastic beverage containers, subject to CRV, sold by the beverage manufacturer in the previous calendar year. The weight of virgin plastic will be used with the weight of PCR plastic specified in subparagraph (D) in order to determine the beverage manufacturer's compliance with the minimum PCR plastic standard in effect during the reporting period specified in subparagraph (B) pursuant to Pub. Res. Code section 14547(a). To determine the beverage manufacturer's compliance with Pub. Res. Code section 14547(a), the following formula is applied:

$$\text{PCR \%} = \frac{\text{PCR weight used in plastic beverage containers}}{(\text{PCR weight used in plastic beverage containers} + \text{virgin plastic weight used in plastic beverage containers})}$$

This formula determines the beverage manufacturer's PCR plastic content percentage and is equal to the quotient of the weight specified in subparagraph (D) (PCR plastic) divided by the sum of the weights specified in subparagraph (C) (virgin plastic), and (D) (PCR plastic) must equal or exceed the minimum PCR plastic standard in effect during the reporting period specified in subparagraph (B). Caps and labels are included in the weights specified in subparagraphs (C)-(D) because they are affixed to the body of the container and constitute parts of the plastic beverage container when sold in the state and may be returned for recycling together as a single unit. The caps and labels may consist of different materials that have distinct recycling markets; and, when not recycled, contribute to litter or the tonnage that is landfilled or is otherwise disposed. If the caps and labels are not plastic, then those materials would not need to be reported pursuant to section 2240(b).

This is necessary because Pub. Res. Code section 14549.3(a) is clear that the beverage manufacturer must report the amount in pounds and by resin type of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage containers for sale in the state, and this reporting structure will allow that to happen and also allow CalRecycle to determine compliance with the requirement.

Section 2240, subsection (b)(1)(D). This proposed new subsection requires the total weight, in pounds, of PCR plastic contained in the body, cap, and label of all plastic beverage containers, subject to CRV, sold by the beverage manufacturer in the previous calendar year; the definition of PCR material is specified in proposed regulation section 2000(a)(34.1). The weight of PCR plastic will be used with the weight of virgin plastic specified in subparagraph (C) and shown in the above formula in order

to determine the beverage manufacturer's compliance with minimum PCR plastic standard in effect during the reporting period specified in subparagraph (B) pursuant to Pub. Res. Code section 14547(a).

This is necessary because Pub. Res. Code section 14549.3(a) is clear that the beverage manufacturer must report the amount in pounds and by resin type of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage containers for sale in the state, and this reporting structure will allow that to happen and also allow CalRecycle to determine compliance with the requirement.

Section 2240, subsection (b)(1)(D)(i). This proposed new subsection further specifies that any non-numerical response, including an omission, provided in the plastic beverage container virgin and postconsumer resin report for the weight of PCR plastic pursuant to subparagraph (C) will be treated as zero because CalRecycle would otherwise not be able to determine the beverage manufacturer's compliance with meeting the minimum PCR plastic content standard pursuant to Pub. Res. Code section 14547(a).

Without this provision, there would be no clarity in how CalRecycle would treat an answer that simply says "Unknown" or blank. By making this clear, CalRecycle expects better compliance with the reporting requirements in section 2240 than would otherwise occur. This provision will better implement the Pub. Res. Code section 14549.3(a) requirement on beverage manufacturers to report to CalRecycle the amount in pounds and by resin type of virgin and postconsumer recycled plastic used by the manufacturer for plastic beverage containers for sale in the state.

Section 2240, subsection (b)(1)(E). requires the printed name, title, email address, and signature of the person preparing the plastic beverage container virgin and postconsumer resin report to facilitate communication between the representative of the beverage manufacturer and CalRecycle as needed primarily to verify the information on the plastic beverage container virgin and postconsumer resin report.

CalRecycle may need to communicate with the person who prepared the report for clarification on any entries made on the report. By specifically identifying the person who prepared the report and requiring their contact information, this will save CalRecycle time and employee resources in locating the best person to contact in regard to the report.

Section 2240, subsection (b)(1)(E)(i). This proposed new subsection specifies that the signature block shall state the information in the plastic beverage container virgin and postconsumer resin report is true and correct, and that the person signing the report is authorized to attest to the information provided in the report for the purposes of confirming that that the information provided on the report is accurate. Item i further specifies that the person signing the plastic beverage container virgin and postconsumer resin report is subject to penalty of perjury.

This is necessary to satisfy the penalty of perjury requirement for these reports, which is established in Pub. Res. Code section 14549.3(a).

Section 2240, subsection (b)(1)(F). This proposed new subsection requires the date and location that the manufacturer of postconsumer recycled plastic form was signed.

This information is required is to demonstrate the authenticity of the information provided pursuant to 2240(b)(1)(E).

Section 2240, subsection (b)(2). This proposed new subsection specifies the annual due date for submitting the plastic beverage container virgin and postconsumer resin report will occur no later than March 1 annually. Pub. Res. Code section 14549.3(a) specifies the annual due date for submitting the report occurring on or before the month of March, and subsection (c) establishes a more specific date. It further specifies the electronic and physical address that the report must be submitted.

Without this specificity as to where to send this report, CalRecycle would be required to accept any report sent to any email or physical address for CalRecycle. This requirement remedies that problem and makes reporting more efficient and clearer for reporting entities.

§ 2250. PETITION TO THE DIRECTOR TO ADJUST THE MINIMUM POSTCONSUMER RECYCLED CONTENT PERCENTAGE.

CalRecycle proposes to add 14 CCR section 2250 to clarify the language of Pub. Res. Code section 14547(a)(4)(A). Pursuant to this section, CalRecycle shall adopt regulations to establish a petition process for the beverage manufacturing industry to request an adjustment to the minimum PCR plastic content requirements outlined in Pub. Res. Code sections 14547(a)(1-3).

The proposed regulation in 14 CCR Section 2250 provides clarifying language describing the procedures for submitting the petition and the content required thereof. These proposed regulations establish parameters for the petition process by specifying that the petition must contain the key information detailed in the subsequent paragraphs which document the factors to be considered by CalRecycle's director, listed in Pub. Res. Code section 14547(a)(4)(A) along with a preferred minimum PCR content percentage.

Section 2250, subsection (a). This proposed new subsection establishes that a petitioning association must represent companies that manufacture beverages, and that the petition is to be submitted, in writing, to the director consistent with Pub. Res. Code section 14547(a)(4)(A). The date when the petition may be submitted is established in Pub. Res. Code section 14547(a)(4)(A). In order to ensure that the association represents the companies that manufacture beverages and is directly affected by Pub. Res. Code section 14547, CalRecycle is adopting a requirement that the association represents at least 35% of beverage manufacturers who reported plastic beverage containers pursuant to section 2240(a) of these regulations during the previous calendar

year to be able to submit the petition.

CalRecycle is proposing this percentage because the association would then represent 234 out of a total of 668 Beverage Manufacturers who reported plastic beverage containers in 2021, and would ensure that the interests of smaller, medium, and large beverage manufacturers are represented by the association. As approximately only 50 beverage manufacturers would be subject to the potential assessment of administrative penalties, and would be the largest by classification of Pub. Res. Code Section 14547(i)(2), 234 beverage manufacturers would ensure that more than the interests of the largest beverage manufacturers would be represented by a qualifying association. The representation standard of 35% was set at this level to maintain the integrity of the petition process by ensuring that a petitioning association proportionally represents a substantive collective interest of the affected beverage manufacturers to whom the petition would apply.

Section 2250, subsection (b). This proposed new subsection adopts the elements of the written petition that must be submitted pursuant to subsection (a) and specified by Pub. Res. Code section 14547(a)(4)(A) in order for the petition to be considered.

CalRecycle is using this organizational structure for the elements of the petition to the director to ensure that the requirements are clearly listed.

Section 2250, subsection (b)(1). This proposed new subsection states that the association's name must be included.

The name will be used for identification purposes to organize in the case of multiple petitions.

Section 2250, subsection (b)(2). This proposed new subsection requires a list of registered beverage manufacturers the association represents.

CalRecycle wants to ensure that the association submitting the petition meets the requirements of Pub. Res. Code section 14547(a)(4)(D) in that it is an association that represents companies that manufacture beverages. As the postconsumer recycled minimum content requirements only apply to beverage manufacturers that sell plastic beverage containers in California, these beverage manufacturers would be registered with CalRecycle. By providing this list, CalRecycle will be able to assess whether this is an association that represents beverage manufacturers directly affected by the postconsumer recycled plastic minimum content requirements.

Section 2250, subsection (b)(2)(A). This proposed new subsection requires the unique manufacturer identification number of the represented beverage manufacturer which the beverage manufacturer obtains for reporting to CalRecycle when registered.

CalRecycle needs this information to establish the validity of the list of beverage manufacturers represented by the association submitting the petition.

Section 2250, subsection (b)(2)(B). This proposed new subsection specifies the name of the beverage manufacturer.

When cross-referenced with the unique manufacturer identification number, CalRecycle can efficiently validate whether the association is representing beverage manufacturers directly affected by Pub. Res. Code section 14547.

The information collected in 2250(b)(2)(A)-(B) will allow CalRecycle to confirm the association represents at least 35% of beverage manufacturers who reported plastic beverage containers pursuant to section 2240(a) of these regulations during the previous calendar year.

Section 2250, subsection (b)(3). This proposed new subsection requires a confirmatory statement that the association represents 35% of the beverage manufacturers who reported plastic beverage containers pursuant to section 2240(a) of these regulations in the previous calendar year.

This confirmatory statement establishes that the association facially meets the requirement of 2250(a) to qualify to submit this petition.

Section 2250, subsection (b)(4). This proposed new subsection requires the filer identification number granted by the Secretary of State, which demonstrates that the association is registered to engage in lobbying for the reduction of the minimum PCR plastic content requirements as a condition for review of the petition.

This requirement is to ensure that the association meets a minimum requirement of organization and formality, and CalRecycle will rely on this information for the validity of the association to lobby CalRecycle on this matter.

Section 2250, subsection (b)(5) and the subsequent subparagraphs (A)-(E) outline the information needed in the petition for the factors that the director will consider in deciding whether or not to reduce the minimum PCR content standard in Pub. Res. Code 14547(a).

CalRecycle is using this organizational structure to clearly list the elements needed for a complete petition to be submitted to CalRecycle.

Section 2250, subsection (b)(5)(A). This proposed new subsection requires information regarding “Changes to market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability both domestically and globally.”

This language is directly copied from Pub. Res. Code section 14547(a)(4)(A)(i), and needs to be included in the form and manner of the submission of the petition pursuant to this adopted regulation.

This subsection is added for completeness so that this requirement of the petition is included in the regulations.

Section 2250, subsection (b)(5)(B). This proposed new subsection requires information regarding “Recycling rates as determined by the Department of Resources Recycling and Recovery”. This clarification further specifies the term “recycling rates” in Pub. Res. Code section 14547(a)(4)(ii) by limiting the general term of “recycling rates” to recycling rates as determined by CalRecycle. Without this clarification, the Department may be forced to consider recycling rates from foreign countries or jurisdictions without the ability to validate whether those purported recycling rates are accurate and representative of the industry as a whole.

CalRecycle adopts this requirement as it may not be able to substantiate the validity of recycling data from other regions, nationally or globally.

Section 2250, subsection (b)(5)(C). This proposed new subsection requires information regarding “The availability of recycled plastic suitable to meet the minimum recycled content requirements, including the availability of high-quality recycled plastic, and food-grade recycled plastic from the state’s and other beverage container recycling programs...” This language is largely copied from Pub. Res. Code section 14547(a)(4)(A)(iii) except for references to the minimum content standards established in Pub. Res. Code section 14547(a) paragraphs (2) and (3) because that reference is not necessary due to when the petition may begin to be submitted to CalRecycle established in 2250(a) and needs to be included in the form and manner of the submission of the petition pursuant to this adopted regulation.

This subsection is added for completeness so that this requirement of the petition is included in the regulations.

Section 2250, subsection (b)(5)(D). This proposed new subsection requires information regarding “The capacity of recycling or processing infrastructure”.

This language is copied directly from Pub. Res. Code section 14547(a)(4)(A)(iv) and needs to be included in the form and manner of the submission of the petition pursuant to this adopted regulation as CalRecycle will need this information to make any determinations on a petition.

This subsection is added for completeness so that this requirement of the petition is included in the regulations.

Section 2250, subsection (b)(5)(E). This proposed new subsection requires information regarding “The progress made by beverage manufacturers in achieving the goals related to meeting the requirements of section 14547(a) of the Public Resources Code.”

This language is a rephrasing of the language in Pub. Res. Code section 14547(a)(4)(A)(v) from a reference to “subdivision” in the statute to the exact subdivision in regulation and needs to be included in the form and manner of the

submission of the petition pursuant to this adopted regulation. CalRecycle will need this information to make any determinations on a petition.

This subsection is added for completeness so that this requirement of the petition is included in the regulations.

Section 2250, subsection (b)(6). This proposed new subsection requires the “association’s preferred reduced minimum postconsumer recycled content percentage as supported by the factors identified in the petition.” CalRecycle is adopting this requirement because any petition that seeks to lower the postconsumer recycled content percentage standard imposed by Pub. Res. Code section 14547(a) must first propose a lower percentage.

Without this information the Director will be unable to weigh the information provided by the petition to determine whether there is sufficient evidence to support lowering this standard and would have no basis to calculate what standard the association-represented registered beverage manufacturers is seeking in a petition.

Section 2250, subsection (c). This proposed new subsection requires the petition to be submitted electronically or physically to CalRecycle address provided.

Without this specificity as to where to send this petition, CalRecycle would be required to accept any petition sent to any particular employee of CalRecycle or field office. This requirement remedies that problem and makes reporting more efficient and clearer for reporting entities.

Section 2250, subsection (d). This proposed new subsection sets the deadline for a determination on a petition submitted pursuant to Section 2250. CalRecycle selected May 1 of the subsequent year as the date when the petition must be submitted to CalRecycle for two reasons. First, this date allows for all events affecting the supply and demand of postconsumer recycled plastic to become defined. Second, the beverage manufacturer plastic beverage container virgin and postconsumer resin reports will all have been submitted to CalRecycle by March 1 pursuant to proposed new section 2240(b) of these regulations. CalRecycle will be able to rely on facts and the industry’s overall ability to meet the minimum postconsumer plastic standards for that reporting period when making a decision on a petition to change the minimum postconsumer plastic standards established in Pub. Res. Code section 14547(a)(2) and (3). An additional reason to select May 1 of the subsequent year for when the decision will be made on a petition submitted pursuant to 2250 is so that this will occur before the any administrative penalties are assessed.

By having a determination before the administrative penalties are assessed, CalRecycle will save time and resources correcting invoices prior to the assessment of administrative penalties if a decision is made to reduce the minimum postconsumer plastic content standard. CalRecycle will not have to issue corrected invoices, document changes in accounts receivables, or resolve confusion from any industry participants about two different invoices issued for the same plastic beverage container virgin and

postconsumer resin report.

§ 2260. CORRECTIVE ACTION PLAN

CalRecycle proposes to add 14 CCR section 2260 which specifies the form and manner that beverage manufacturer may, pursuant to Pub. Res. Code section 14547(c)(1), seek a reduction in the assessed administrative penalties by submitting a corrective action plan pursuant to Pub. Res. Code section 14547(e)(3).

The proposed regulation in 14 CCR Section 2260 specifies the procedure for submitting and the required content of the corrective action plan, as well as CalRecycle's timeline for approval or denial of the corrective action plan. If CalRecycle approves the corrective action plan, then CalRecycle may reduce administrative penalties assessed on the beverage manufacturer pursuant to Pub. Res. Code section 14547(e)(3) in the form and manner specified in the proposed regulation 14 CCR Section 2265. If CalRecycle denies the corrective action plan, then the beverage manufacturer must pay the penalties that were assessed to them for failure to meet the minimum content standard as there would be no approved corrective action plan required by Pub. Res. Code section 14547(e)(3).

Section 2260, subsection (a). This proposed new subsection establishes that, prior to the consideration of a reduction of an administrative penalty, a beverage manufacturer must submit a corrective action plan, in writing, to the director. This submission serves as acknowledgement and documentation of the steps the beverage manufacturer plans to take to meet the minimum PCR plastic content standard. The requirement for a corrective action plan before a reduction in administrative penalties is found in Pub. Res. Code section 14547(e)(3).

Section 2260, subsection (b). This proposed new subsection outlines the components of the corrective action plan that must be included.

CalRecycle is using this organizational structure to clearly list the elements needed for a complete petition to be submitted to CalRecycle.

Section 2260, subsection (b)(1). This proposed new section requires the beverage manufacturer's name and CalRecycle issued identification number to correctly identify the beverage manufacturer providing the information.

CalRecycle needs this information to associate the corrective action plan to the correct beverage manufacturer.

Section 2260, subsection (b)(2). This proposed new subsection requires the reporting period during which the beverage manufacturer has failed to meet the minimum PCR plastic content standard.

CalRecycle needs this information to ensure that the corrective action plan is for the appropriate reporting period.

Section 2260, subsection (b)(3). This proposed new subsection requires an explanation by the beverage manufacturer as to the reason(s) for failing to meet the minimum PCR plastic content standard which will be considered in the approval or denial of the corrective action plan.

This requirement is in Pub. Res. Code section 14547(e)(3) and is repeated here to ensure statutory requirements are met for the submission of a corrective action plan.

Section 2260, subsection (b)(4). This proposed new subsection requires the beverage manufacturer to describe the steps they will take to meet the minimum PCR plastic content standard within the next reporting year provided pursuant to paragraph (5). The identified steps provided pursuant to paragraph (4) will be considered in conjunction with the reasoning for failure to meet the minimum PCR standard provided pursuant to paragraph (3) when approving or denying the corrective action plan and the subsequent possibility of a reduction of administrative penalties. These steps also demonstrate a commitment by the beverage manufacturer to implement the changes necessary to achieve the minimum PCR plastic content requirement within the next reporting year.

This requirement is in Pub. Res. Code section 14547(e)(3) and is repeated here to ensure statutory requirements are met for the submission of a corrective action plan.

Section 2260, subsection (b)(5). This proposed new subsection requires the timeframe within which the beverage manufacturer plans to implement the steps necessary to comply with the minimum PCR content standard.

This is to ensure that the statutory requirement of Pub. Res. Code section 14547(e)(3) is met and that the time to implement the steps taken by the beverage manufacturer is within the next reporting period.

Section 2260, subsection (b)(6). This proposed new subsection requires information related to the steps a beverage manufacturer took to implement a corrective action plan approved in prior years.

This provision is to ensure that CalRecycle has enough information to weigh previous compliance with prior approved corrective plans when determining whether to approve a newly submitted corrective action plan. Without this provision, CalRecycle will have no meaningful access to information on the steps taken by a beverage manufacturer to implement a corrective action plan.

Section 2260, subsection (c). This proposed new subsection establishes a 30-day deadline to submit a corrective action plan from the beverage manufacturer's receipt of an invoice for an administrative penalty.

CalRecycle selected 30 days for the submission of a corrective action plan because a beverage manufacturer will already have a preexisting 60-day window prior to these additional 30 days to submit the corrective action plan. This is because the beverage

manufacturer will know at the time of reporting whether or not they met the postconsumer recycled plastic content standards found in Pub. Res. Code section 14547 and *could* be subject to administrative penalties. The department will not invoice a beverage manufacturer until after the March 1 report submission deadline, and no earlier than May 1 annually when the Director may decide to reduce the postconsumer recycled plastic content standard pursuant to section 2250 of these regulations. As such, a 30-day deadline for submission of a corrective action plan is achievable by the beverage manufacturer because it takes into account a preexisting minimum 60 calendar days from the March 1 submission deadline until the invoicing date which will occur after May 1 for a total of 90 days to prepare relevant documents to submit the corrective action plan.

Section 2260, subsection(d). This proposed new subsection establishes the electronic and physical addresses where the corrective action plan may be submitted to the Division of Recycling.

Without this specificity as to where to send this petition, CalRecycle would be required to accept any petition sent to any particular employee of CalRecycle or field office.

Section 2260, subsection (e). This proposed new subsection establishes the timeline of 60 calendar days after the receipt of the corrective action plan for CalRecycle to approve or deny the corrective action plan.

CalRecycle chose 60 calendar days as this will provide sufficient time for CalRecycle to gather any information it may need in addition to the corrective action plan to evaluate whether the corrective action plan will be approved or denied.

§ 2265. REDUCTION IN ADMINISTRATIVE PENALTIES

CalRecycle proposes to add 14 CCR section 2265 to further specify the factors that CalRecycle will consider when determining a reduction of administrative penalties, pursuant to Pub. Res. Code section 14547(e)(2), and to specify the maximum number of days which can elapse before CalRecycle will grant or deny a penalty reduction following the approval of a corrective action plan. As a prerequisite to seek a reduction in administrative penalties assessed on beverage manufacturers pursuant to Pub. Res. Code section 14547(c)(1), a beverage manufacturer must submit and have an approved corrective action plan pursuant to Pub. Res. Code section 14547(e)(3), in the form and manner specified in the proposed regulation section 2260. Subsection (a) stipulates the specific factors to be considered by CalRecycle when determining whether to grant or deny a reduction of administrative penalties.

Section 2265, subsection (a). This proposed new subsection permits a beverage manufacturer to submit a written request to the director of CalRecycle of Resources Recycling and Recovery for a reduction in administrative penalties and requires the beverage manufacturer to state to what they want the administrative penalties to be reduced to.

Section 2265, subsection (b). This proposed new subsection restates the mandate in Pub. Res. Code section 14547(e)(1) to CalRecycle to consider granting the reduction of the assessed administrative penalties according to the factors detailed in Pub. Res. Code section 14547(e)(2).

Section 2265, subsection (b)(1). This proposed new subsection reiterates anomalous or abnormal market conditions as consistent with the factor cited in Pub. Res. Code 14547(e)(2)(A).

Section 2265, subsection (b)(2). This proposed new subsection reiterates a disruption in or a lack of supply of recycled plastics as consistent with the factor cited in Pub. Res. Code 14547(e)(2)(B).

Section 2265, subsection (b)(3). This proposed new subsection clarifies the other factors that have prevented the beverage manufacturer from meeting the minimum PCR plastic content standard as consistent with the factor cited in Pub. Res. Code 14547(e)(2)(C).

Section 2265, subsection (b)(3)(A)(i) These proposed new subsections eliminate factors from Paragraph (3) that CalRecycle will not consider when determining whether to grant or deny a reduction in administrative penalties. Item i. excludes from consideration the beverage manufacturer's inability to obtain supporting documentation from the container manufacturer or other vendor concerning the type of plastic used in the manufacture of beverage containers used by the beverage distributor. Providing the weights of virgin and PCR plastic is essential to establishing and maintaining a minimum PCR plastic standard pursuant to Pub. Res. Code section 14547(a).

CalRecycle recognizes that some beverage manufacturers, such as those who sell imported beverages, may have initial difficulty in identifying and obtaining information from the container manufacturer, but once this relationship is established, completing subsequent iterations of the plastic beverage container virgin and postconsumer resin report, specified in proposed regulation section 2240, is expected to become less burdensome.

Section 2265, subsection (b)(3)(A)(ii) Item ii. excludes from consideration the beverage manufacturer's inability to pay the assessed administrative penalty pursuant to Pub. Res. Code section 14547(c).

The inability to pay administrative penalties is not a factor that directly prevents a beverage manufacturer from meeting the minimum PCR plastic content standard as specified in paragraph (3).

Section 2265, subsection (b)(4). This proposed new subsection specifies a CalRecycle approved corrective action plan pursuant to Pub. Res. Code 14547(e)(3) as a condition for the granting of the reduction of administrative penalties.

While this requirement is found in Pub. Res. Code 14547(e)(3), it is repeated in this section so that all criteria for the determination to reduce a beverage manufacturer's assessed administrative penalty are located in one area without having to reference the implementing statute. When determining whether to grant or deny a reduction of administrative penalties, CalRecycle will consider the steps the beverage manufacturer will take and implement to comply with the minimum PCR plastic standard.

Section 2265, subsection (b)(5). This proposed new subsection adds a beverage manufacturer's implementation of any prior approved corrective actions plans.

This subsection is proposed to add an important criterion to the decision to reduce a beverage manufacturer's assessed administrative penalties. Pub. Res. Code section 14547(e)(3) requires CalRecycle to assess a beverage manufacturer's implementation of a corrective action plan. The best information on the implementation of a corrective action plan is any prior history of implementing any prior approved corrective action plans. This will allow CalRecycle to recognize if a beverage manufacturer is merely meeting the requirements of a corrective action plan without any intention of implementing the fully approved corrective action plan.

Section 2265, subsection (c). This proposed new subsection clarifies that the request for a reduction in administrative penalties must be submitted with the corrective action plan in section 2260 of these regulations.

This is required because no reduction in administrative penalties may be granted without a corrective action plan pursuant to Pub. Res. Code section 14547(e)(3) and simplifies when the request for a reduction in administrative remedies must be submitted.

Section 2265, subsection (d). This proposed new subsection specifies that CalRecycle will either grant or deny the reduction in administrative penalties within 30 calendar days after the acceptance of a corrective action plan, specified in the proposed regulation Section 2260(c). Subsection (b) provides this timeframe because no such timeframe is cited in Pub. Res. Code section 14547. The time period of 30 calendar days was chosen because this will permit CalRecycle enough time to verify the information submitted in a corrective action plan and CalRecycle anticipates needing up to 30 calendar days to handle the influx of corrective action plans and requests for a reduction in administrative penalties when the postconsumer recycled minimum content standard changes pursuant to Pub. Res. Code section 14547(a).

§ 2780. PLASTIC MATERIAL RECLAIMER IDENTIFICATION NUMBER

CalRecycle proposes to add 14 CCR section 2780 to issue a plastic material reclaimer identification number (identification number) in writing to the newly defined entity "plastic material reclaimer", as defined in proposed section 2000(a)(34.3). Plastic material reclaimers are annually required to report to CalRecycle the amount in pounds and by resin type of empty plastic beverage containers subject to CRV that the plastic material reclaimer collected and sold during the previous calendar year, beginning on or before March 1, 2024, pursuant to Pub. Res. Code section 14549.3(b).

The identification number issued pursuant to proposed section 2780 will be used to monitor compliance with mandated reporting required by Pub. Res. Code section 14549.3(b). The identification number issued pursuant to 14 CCR section 2780 will associate the name, business address, and reporting information in the proposed plastic material reclaimer report, specified in proposed 14 CCR section 2785, with the specific plastic material reclaimer providing the information. In addition, the identification number will facilitate the analysis and summarization of current and historical volume information contained in the most recent and prior year forms. Finally, this proposed identification number and its required use by the plastic material reclaimer will be used in the completion of the proposed plastic material reclaimer report and is consistent with CalRecycle's authority to prescribe the form and manner of submitting the amount in pounds and by resin type of empty plastic beverage containers subject to CRV that the plastic material reclaimer collected and sold during the previous calendar year as specified in Pub. Res. Code section 14549.3(b).

§ 2785. PLASTIC MATERIAL RECLAIMER REPORT

CalRecycle proposes to add 14 CCR section 2785 to specify the information contained in the plastic material reclaimer report, which is required to be completed annually by plastic material reclaimers, as defined in proposed section 2000(a)(34.3).

Section 2785, subsection (a). This proposed new subsection establishes that the plastic material reclaimer report must be submitted to CalRecycle beginning on or before March 1, 2024, and for every year after.

This requirement is found in Pub. Res. Code section 14549.3(b) and is included here for ease of reference for the requirements of reporting.

Section 2785, subsection (b). This proposed new subsection specifically names the form "The plastic material reclaimer report" and sets out the required components of the form by subordinate paragraphs.

CalRecycle is using this organizational structure to clearly list the elements needed for a complete petition to be submitted to CalRecycle.

Section 2785, subsection (b)(1). This proposed new subsection requires the year of the reporting period because Pub. Res. Code section 14549.3(b) specifies that the plastic material reclaimer report must be completed annually covering the volume of empty plastic beverage containers collected and sold during the previous calendar year.

This requirement is found in Pub. Res. Code section 14549.3(b) and included here for ease of reference for the requirements of reporting.

Section 2785, subsection (b)(2). This proposed new subsection requires the plastic material reclaimer identification number.

This proposed new subsection will allow CalRecycle to identify and monitor the plastic

material reclaimer's compliance with the mandated completion and submittal of the plastic material reclaimer report as specified by Pub. Res. Code section 14549.3(b).

Section 2785, subsection (b)(3). This proposed new subsection requires the facility name of the plastic material reclaimer.

This information will be used to associate this information with the plastic material reclaimer identification number to ensure the report correctly identifies the plastic material reclaimer providing the information on the plastic material reclaimer report.

Section 2785, subsection (b)(4). This proposed new subsection requires the address for the facility and any other location where empty plastic beverage containers subject to the plastic material reclaimer report are stored.

It is necessary for CalRecycle to collect the address for the facility and any storage locations so that CalRecycle can conduct inspections and audits of the empty plastic beverage containers in possession of the plastic material reclaimer and verify the accuracy of any submitted plastic material reclaimer report.

Section 2785, subsection (b)(5). This proposed new subsection requires the mailing address of the plastic material reclaimer.

This information will be used to associate this information with the plastic material reclaimer identification number to ensure the report correctly identifies the plastic material reclaimer providing the information on the plastic material reclaimer report.

Section 2785, subsection (b)(6). This proposed new subsection requires the contact person for the plastic material reclaimer report.

This information is needed to facilitate communication between CalRecycle and the plastic material reclaimer in order to verify any information submitted on the plastic material reclaimer report.

Section 2785, subsection (b)(7). This proposed new subsection requires the telephone number of the contact person for the plastic material reclaimer report.

This information is needed to facilitate communication between CalRecycle and the plastic material reclaimer in order to verify any information submitted on the plastic material reclaimer report.

Section 2785, subsection (b)(8). This proposed new subsection requires the email address of the contact person for the plastic material reclaimer report.

This information is needed to facilitate communication between CalRecycle and the plastic material reclaimer in order to verify any information submitted on the plastic material reclaimer report.

Section 2785, subsection (b)(9). This proposed new subsection requires the weight, in pounds, of empty plastic beverage containers subject to CRV, by resin type, collected and sold by the plastic material reclaimer in order to determine the volume of PCR plastic beverage containers generated from the BCRP for each resin type used to manufacture plastic beverage containers using feedstock from PCR plastic.

CalRecycle's purpose for obtaining this information is to assess both the availability of recycled plastic suitable to meet the minimum recycled content requirements and the capacity of the recycling or processing infrastructure when determining whether or not to adjust the minimum PCR content percentage pursuant to Pub. Res. Code section 14547(a)(4). This requirement is found in Pub. Res. Code section 14549.3(b) and included here for ease of reference for the requirements of reporting.

Section 2785, subsection (b)(10). This proposed new subsection requires the weight of empty plastic containers from any source, including empty plastic beverage containers subject to CRV, that are sold or transferred within California to a manufacturer of postconsumer recycled plastic, as defined by proposed section 2000(a)(29.9).

This information is necessary in order to determine the volume of PCR plastic containers actually used as feedstock to manufacture plastic containers intended for beverages subject to CRV, or any other type of beverage.

CalRecycle's purpose for obtaining this information is to assess both the availability of recycled plastic suitable to meet the minimum recycled content requirements and the capacity of the recycling or processing infrastructure when determining whether or not to adjust the minimum PCR content percentage pursuant to Pub. Res. Code section 14547(a)(4). This requirement is found in Pub. Res. Code section 14549.3(b) and included here for ease of reference for the requirements of reporting.

Section 2785, subsection (b)(11). This proposed new subsection requires the printed name, title, and signature of the person preparing the plastic material reclaimer report.

The department requires this information to identify the person signing the report under penalty of perjury.

Section 2785, subsection (b)(11)(A). This proposed new subsection specifies that the signature block shall state the information in the plastic material reclaimer report is true and correct, and the person signing is authorized to attest to the information provided in the report for the purposes of confirming that that the information provided on the form is accurate. Subparagraph (A) further specifies that the person signing the plastic material reclaimer report is subject to penalty of perjury. The requirement to submit this report under penalty of perjury is found in Pub. Res. Code section 14549.3(b).

Section 2785, subsection (b)(12). This proposed new subsection requires the date and location that the plastic material reclaimer report was signed to demonstrate the authenticity of the information provided pursuant to 2785(b)(10).

Section 2785, subsection (c). This proposed new subsection establishes the electronic and physical addresses where the plastic reclaimer report may be submitted to the Division of Recycling. Without this specificity as to where to send this petition, CalRecycle would be required to accept any plastic reclaimer report sent to any electronic address or physical address of CalRecycle.

§ 2790. MANUFACTURER OF POSTCONSUMER RECYCLED PLASTIC IDENTIFICATION NUMBER

CalRecycle proposes to add 14 CCR section 2790 to issue a manufacturer of postconsumer recycled plastic identification number (identification number) in writing to the newly defined entity, “manufacturer of postconsumer recycled plastic”, as defined in proposed 14 CCR section 2000(a)(29.9). Manufacturers of postconsumer recycled plastic are annually required to report to CalRecycle the amount in pounds of food-grade flake, pellet, sheet, or fines that were sold during the previous calendar year, their capacity to produce food-grade material, the amount in pounds of material that meets beverage manufacturer specifications for bottle-grade material, and the amount in pounds of food-grade material sold in the state for beverage processing beginning on or before March 1, 2024, pursuant to Pub. Res. Code section 14549.3(c).

The identification number issued pursuant to proposed 14 CCR section 2790 will be used to monitor compliance with mandated reporting required by Pub. Res. Code section 14549.3(c). The identification number will associate the name, business address, and reporting information in the manufacturer of postconsumer recycled plastic form, specified in proposed 14 CCR section 2795, with the specific manufacturer of postconsumer recycled plastic providing the information. In addition, the identification number will facilitate the analysis and summarization of current and historical volume information contained in the most recent and prior year forms. Finally, this proposed Department issued identification number and its required use by the manufacturer of postconsumer recycled plastic in completing the manufacturer of postconsumer recycled plastic form is consistent with CalRecycle’s authority to prescribe the form and manner of submitting the amount in pounds of food-grade flake, pellet, sheet, or fines that were sold during the previous calendar year, their capacity to produce food-grade material, the amount in pounds of material that meets beverage manufacturer specifications for bottle-grade material, and the amount in pounds of food-grade material sold in the state for beverage processing specified in Pub. Res. Code section 14549.3(c).

§ 2795. MANUFACTURER OF POSTCONSUMER RECYCLED PLASTIC REPORT

CalRecycle proposes to add 14 CCR section 2795 to identify the information contained in the manufacturer of postconsumer recycled plastic report, which is required to be completed annually by manufacturers of postconsumer recycled plastic, as defined in proposed section 2000(a)(29.9), beginning on or before March 1, 2024, pursuant to Pub. Res. Code section 14549.3(c). The detail and rationale for the information required to be provided on the manufacturer of postconsumer recycled plastic form, specified in this proposed regulation is outlined below.

Section 2795, subsection (a). This proposed new subsection establishes that the manufacturer of postconsumer recycled plastic report must be submitted to CalRecycle beginning on or before March 1, 2024, and for every year after.

This requirement is found in Pub. Res. Code section 14549.3(c), and included here for ease of reference for the requirements of reporting.

Section 2795, subsection (b). This proposed new subsection specifically names the form “The manufacturer of postconsumer recycled plastic form” and sets out the required components of the form by subordinate paragraphs.

Section 2795, subsection (b)(1). This proposed new subsection requires the year of the reporting period because Pub. Res. Code section 14549.3(c) specifies that the manufacturer of postconsumer recycled plastic report must be completed annually covering the volume of food-grade flake, pellet, sheet, or fines that were sold during the previous calendar year and their capacity to produce food-grade material, along with other related information.

This information will allow CalRecycle to properly organize the reports submitted by a manufacturer of postconsumer recycled and to verify compliance with the deadline to submit the manufacturer of postconsumer recycled plastic report.

Section 2795, subsection (b)(2). This proposed new subsection requires the manufacturer of postconsumer recycled plastic identification number.

This information will allow CalRecycle to identify and monitor the manufacturer of postconsumer recycled plastic compliance with the mandated completion and submittal of the manufacturer of postconsumer recycled plastic form as specified by Pub. Res. Code section 14549.3(c).

Section 2795, subsection (b)(3). This proposed new subsection requires the facility name on the manufacturer of postconsumer recycled plastic form.

This information will be associated with the manufacturer of postconsumer recycled plastic identification number to ensure the form correctly identifies the manufacturer of postconsumer recycled plastic providing the information.

Section 2795, subsection (b)(4). This proposed new subsection requires the address for the facility and any other location where food-grade plastic material subject to the manufacturer of postconsumer recycled plastic report is stored.

It is necessary for CalRecycle to collect the address for the facility and any storage locations so that CalRecycle can conduct inspections and audits of the food-grade plastic material in possession of the manufacturer of postconsumer recycled plastic and verify the accuracy of any submitted plastic material reclaimer report.

Section 2795, subsection (b)(5). This proposed new subsection requires the mailing address of the manufacturer of postconsumer recycled plastic.

This information will be associated with the manufacturer of postconsumer recycled plastic identification number to ensure the form correctly identifies the manufacturer of postconsumer recycled plastic providing the information.

Section 2795, subsection (b)(6). This proposed new subsection requires the contact person for the manufacturer of postconsumer recycled plastic form.

This information is needed to facilitate communication between CalRecycle and the manufacturer of postconsumer recycled plastic in order to verify any information submitted on the manufacturer of postconsumer recycled plastic form.

Section 2795, subsection (b)(7). This proposed new subsection requires the telephone number of the contact person for the manufacturer of postconsumer recycled plastic form.

This information is needed to facilitate communication between CalRecycle and the manufacturer of postconsumer recycled plastic in order to verify any information submitted on the manufacturer of postconsumer recycled plastic form.

Section 2795, subsection (b)(8). This proposed new subsection requires the email address of the contact person for the manufacturer of postconsumer recycled plastic form.

This information is needed to facilitate communication between CalRecycle and the manufacturer of postconsumer recycled plastic in order to verify any information submitted on the manufacturer of postconsumer recycled plastic form.

Section 2795, subsection (b)(9). This proposed new subsection requires the weight in pounds of food-grade plastic, including flake, pellet, sheet, fines, or other forms, by resin type sold by the manufacturer of postconsumer recycled plastic. Pub. Res. Code section 14549.3(c) requires this information to be submitted to CalRecycle. CalRecycle's purpose for obtaining this information is to assess both the availability of recycled plastic suitable to meet the minimum recycled content requirements and the capacity of the recycling or processing infrastructure when determining whether to adjust the minimum PCR plastic content percentage pursuant to Pub. Res. Code section 14547(a)(4).

Pub. Res. Code section 14549.3(c) requires this information to be submitted to CalRecycle.

Section 2795, subsection (b)(10). This proposed new subsection requires the capacity in pounds of the manufacturer of postconsumer recycled plastic to produce food-grade material, as defined in proposed section 2000(a)(24.5), by resin type. Pub. Res. Code section 14549.3(c) requires this information to be submitted to CalRecycle.

CalRecycle's purpose of obtaining this information is to assess both the availability of recycled plastic suitable to meet the minimum recycled content requirements and the capacity of the recycling or processing infrastructure when determining to adjust the minimum PCR plastic content percentage pursuant to Pub. Res. Code section 14547(a)(4).

Section 2795, subsection (b)(11). This proposed new subsection requires the weight in pounds of food-grade plastic, as defined in proposed section 2000(a)(24.5), by resin type, that meets beverage manufacturer specifications for bottle-grade material, as defined in proposed section 2000(a)(3.5), offered for sale by the manufacturer of postconsumer recycled plastic, including the part of that weight that may have not been sold or sold and not used for bottle-grade applications during the year reported. Pub. Res. Code section 14549.3(c) requires this information to be submitted to CalRecycle.

CalRecycle's purpose in obtaining this information is to assess the overall supply of bottle-grade plastic available as PCR plastic feedstock used for manufacturing plastic beverage containers when determining to adjust the minimum PCR plastic content percentage pursuant to Pub. Res. Code section 14547(a)(4).

Section 2795, subsection (b)(12). This proposed new subsection requires the weight in pounds of food-grade material, as defined in proposed section 2000(a)(24.5), by resin type, that meets beverage manufacturer specifications for bottle-grade material, as defined in proposed section 2000(a)(3.5), that was sold by the manufacturer of postconsumer recycled plastic during the reporting year. Pub. Res. Code section 14549.3(c) requires this information to be submitted to CalRecycle.

CalRecycle's purpose in obtaining this information is to assess the overall supply of bottle-grade plastic available as PCR plastic feedstock used for manufacturing plastic beverage containers when determining to adjust the minimum PCR plastic content percentage pursuant to Pub. Res. Code section 14547(a)(4).

Section 2795, subsection (b)(13). This proposed new subsection requires the printed name, title, and signature of the person preparing the manufacturer of postconsumer recycled plastic form. This information is needed to facilitate communication between CalRecycle and the manufacturer of postconsumer recycled plastic in order to verify any information submitted on the manufacturer of postconsumer recycled plastic form.

Section 2795, subsection (b)(13)(A). This proposed new subsection specifies that the signature block shall state the information in the manufacturer of postconsumer recycled plastic form is true and correct, and the person signing is authorized to attest to the information provided in the form for the purposes of confirming that that the information provided on the form is accurate. Subparagraph (A) further specifies that the person signing the manufacturer of postconsumer recycled plastic form is subject to penalty of perjury.

The requirement to sign this form under penalty of perjury is found in Pub. Res. Code section 14549.3(b).

Section 2795, subsection (b)(14). This proposed new subsection requires the date and location that the manufacturer of postconsumer recycled plastic form was signed to demonstrate the authenticity of the information provided pursuant to Paragraph (12).

Section 2795, subsection (c). This proposed new subsection establishes the electronic and physical addresses where the manufacturer of postconsumer recycled plastic report may be submitted to the Division of Recycling.

Without this specificity as to where to send this petition, CalRecycle would be required to accept any manufacturer of postconsumer recycled plastic report sent to any electronic address of CalRecycle or Department physical address.

Factual Basis/Rationale:

CalRecycle has determined that the proposed rulemaking changes are appropriate for the following reasons:

The overall framework for developing a program for minimum standards for PCR plastic content in plastic beverage containers is contained in Pub. Res. Code section 14547. Where this statute lacks the specificity for program implementation, these proposed regulations clarify the definitions of impacted businesses, specify reporting and recordkeeping requirements, and provide procedures for beverage manufacturers, individually or in association as a group, to seek relief from administrative penalties if the plastic bottles used to sell their product fail to meet the minimum content standard set by AB 793.

Necessity

Pub. Res. Code sections 14547 and 14549.3 establish the minimum content requirements for PCR plastic in plastic beverage containers sold in the state, the penalties for failure to meet those standards, and the requirements for reporting the required information to CalRecycle necessary to enforce those standards. However, these statutes lack the specificity for program implementation. These proposed regulations clarify the definitions of impacted businesses, specify reporting and recordkeeping requirements to ensure that the information is submitted in a statutorily consistent manner, and provide procedures for beverage manufacturers, individually or in association as a group, to seek relief from imposed PCR plastic minimum content standards and administrative penalties if the beverage manufacturer fails to meet the minimum content standard.

Economic Impact for “Major Regulations”

These proposed regulations do not meet the criteria for major regulations specified in Health and Safety Code section 57005(b) and do not need a Standardized Regulatory Impact Analysis. The estimated economic impact amount is below the \$50 million

threshold for major regulations. CalRecycle estimates the economic impact of this regulation is negligible as the scope is generally limited to the form and manner of implementing the reporting requirements, administrative penalties, and relief measures to reduce administrative penalties associated with plastic beverage containers as specified in AB 793 (Chapter 115, Statutes of 2020). The Economic and Fiscal Impact Statement includes a discussion of alternatives as required by the California Environmental Protection Agency pursuant to Health and Safety Code section 57005.

Economic Impact Assessment

This proposed regulation will have the following effects:

- No jobs are anticipated to be created nor eliminated statewide as the scope of the regulations is limited to the form and manner of reporting on the use of virgin and PCR plastic in plastic beverage containers, the reporting of the production of food- and bottle-grade plastic, and procedures for pursuing measures to provide relief from administrative penalties.
- No businesses are anticipated to be created nor eliminated statewide as the scope of the regulations is limited to the form and manner of reporting on the use of virgin and PCR plastic in plastic beverage containers, the reporting of the production of food- and bottle-grade plastic, and procedures for pursuing measures to provide relief from administrative penalties.
- No expansion of businesses currently doing business within the state is anticipated from the proposed amendments and adoptions of these regulations.
- It will benefit the health and welfare of California residents along with the state's environment. The goal of this proposed regulation is to specify the form and manner of implementing a minimum PCR plastic standard for plastic beverage containers, thereby increasing the demand for recycled plastic and reducing plastic litter. Additionally, increased use of recycled plastic in the manufacture of plastic beverage containers reduces greenhouse gas emissions as compared to the usage of virgin plastic.
- It will not affect worker safety because CalRecycle is not aware of any impacts from this proposed regulation that would be related to worker safety.

Technical, Theoretical, and/or Empirical Study, Report or Documents Relied Upon

CalRecycle utilized the following sources:

- Attachment 1: The Plastic Beverage Container Virgin and Postconsumer Resin Report covering calendar year 2021.
- Attachment 2: The Association of Plastic Recyclers, PCR Certification Program Frequently Asked Questions.
- International Standard ISO 14021: Environmental labels and declarations – Self-declared environment claims (Type II environmental labelling).
- Economic and Fiscal Impact Statement STD 399 and Economic Impact Statement Appendix

Anticipated Benefits

The goal of AB 793 is to help develop domestic markets for recycled plastic, reduce the amount of virgin plastic used, and provide a closed-loop solution for plastic beverage

containers by establishing minimum PCR plastic content standards for plastic beverage containers subject to CRV.

The proposed amendments and additions to the regulations provide the following benefits that are aligned with the goals of AB 793:

- Defines reporting entities (plastic material reclaimer and manufacturer of postconsumer recycled plastic) and the goods whose production volume they are required to report (bottle-grade plastic and food-grade plastic) as specified in Pub. Res. Code sections 14549.3(b) and (c).
- Clarifies the procedures and information required for an association of a group of beverage manufacturers to petition CalRecycle to reduce the PCR plastic minimum content standard as specified in Pub. Res. Code section 14547(a)(4)(A).
- Provides the form and manner for completing mandated reporting by beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic specified in Pub. Res. Code section 14549.3.
- Includes recordkeeping requirements of minimum recycled plastic content documentation for beverage manufacturers to facilitate reporting the content of virgin and PCR plastic specified in Pub. Res. Code section 14549.3(a).
- Establishes the procedures and information required for a request to reduce administrative penalties and submission of corrective action plans by individual beverage manufacturers as permitted by Pub. Res. Code section 14547(e).
- Permits CalRecycle to use the Notice of Violation process in section 2100 of title 14 of the California Code of Regulations to impose discipline on beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic for failure to submit required reports accurately and correctly, which is a less costly form of discipline and permits for lower assessments of civil penalties when compared to the other discipline provisions of the Act.

Additionally, the proposed regulations will benefit the health and welfare of California residents along with the state's environment by providing the specificity necessary to implement a minimum PCR plastic standard for plastic beverage containers, which will increase the demand for recycled plastic, reduce plastic litter, and increase the use of recycled plastic in the manufacture of plastic beverage containers thereby reducing greenhouse gas emissions, as compared to the use of virgin plastic. There are no anticipated benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity, or an increase in transparency in business and government.

Reasonable Alternatives to the Regulation and the Agency's Reason for Rejecting those Alternatives

Set forth below is the reasonable alternative which was considered and the reasons the alternative was rejected:

Alternative 1: Do not adopt regulations and rely on Pub. Res. Code sections 14547 and 14549.3 to implement the plastic minimum PCR plastic content standard.

Reason for Rejecting Alternative 1: The aforementioned statute lacks the specificity to implement the plastic minimum PCR content standard. Regulations are needed to ensure sufficient information is provided in the annual reports completed by beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic pursuant to Pub. Res. Code section 14549.3. In addition, regulations are needed to specify the content of and procedures for submitting petitions to adjust the minimum content standard, outlined in Pub. Res. Code section 14547(a)(4), and corrective action plans, pursuant to Pub. Res. Code section 14547(e)(3). Finally, regulations are needed to provide additional guidelines, preconditions, and timeframes to assess administrative penalties pursuant to Pub. Res. Code section 14547(c). This alternative would not lessen any potential adverse impact on small businesses because without the specificity added by the proposed regulations, small businesses may face additional burdens as they determine how to comply with Pub. Res. Code sections 14547 and 14549.3 without any clarity and standardized requirements from CalRecycle.

CalRecycle is unable to identify an alternative 2 for the proposed regulations as the regulations offer the form and manner of reporting and requesting a reduction of administrative penalties or a reduction in the postconsumer plastic minimum content standards established by Pub. Res. Code section 14547(a)(2) and (3).

Alternatives Statement

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed, would be as effective or less burdensome, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Adopting this regulation has the most justifiable value.

Specific Technologies or Equipment

This proposed regulation does not mandate the use of specific technologies or equipment. The scope of the proposed regulation is generally limited to the form and manner of implementing the reporting requirements, requesting a reduction in administrative penalties, and relief measures to reduce postconsumer recycled plastic minimum content standards established associated with plastic beverage containers.

Evidence Relied Upon to Support the Initial Determination That the Regulation Will Not Have a Significant Adverse Economic Impact on Business- Government Code section 11346.2(b)(4):

The cost of this proposed regulation will be negligible because the mandates and penalties for noncompliance are based on Pub. Res. Code sections 14547(b) and 14547(c). Statute specifies the minimum content standard for PCR plastic in plastic beverage containers, mandated reporting on the use of virgin and PCR plastic, administrative penalties for noncompliance with the PCR plastic requirements, and measures to provide relief from administrative penalties. The scope of these proposed regulations is generally limited to the form and manner of implementing the reporting

requirements or petitions, criteria for approval of corrective action plans and reductions in administrative penalty assessments, and criteria for granting or denying petitions to reduce the postconsumer recycled plastic minimum content standards established in Pub. Res. Code section 14547(a)(2) and (3). Thus, CalRecycle finds that these regulations will not have a significant adverse economic impact on business.

Reporting, recordkeeping, or other compliance requirements:

This proposed regulation will name the plastic beverage container virgin and postconsumer resin report described in Pub. Res. Code section 14549.3(a), the plastic material reclaimer report described in Pub. Res. Code section 14549.3(b), and the manufacturer of postconsumer recycled plastic report described in Pub. Res. Code section 14549.3(c), define the components of these forms, and specify the form, manner, and timeline for completion of these forms. In addition, this proposed regulation will impose recordkeeping requirements on beverage manufacturers to maintain minimum PCR plastic documentation for the purpose of substantiating the usage of PCR plastic as cited in the plastic beverage container virgin and postconsumer resin report specified in Pub. Res. Code section 14549.3(a).

Furthermore, this proposed regulation will specify the form and manner where beverage manufacturers may optionally pursue various measures outlined in Pub. Res. Code 14547(e) to seek relief from administrative penalties assessed for not meeting the minimum PCR plastic standard specified in Pub. Res. Code section 14547(c). This proposed regulation also contains procedures for petitioning the CalRecycle director by an association representing the beverage manufacturing industry to adjust the minimum PCR plastic content standard as specified in Pub. Res. Code section 14547(a)(4). Lastly, this proposed regulation outlines the procedure for submitting a corrective action plan detailing reasons why compliance with the minimum content standard was not met and measures to be taken to achieve compliance and to reduce administrative penalties, as specified in Pub. Res. Code section 14547(e)(3).

Conflict or Duplication with State Regulations

CalRecycle has evaluated this regulatory proposal and has determined that it is not inconsistent nor incompatible with existing state regulations. The proposed regulations will not be duplicative of other existing regulations as the beverage container recycling program is unique to the state of California, and there is no other agency outside of CalRecycle that administers payments and claims for recycling beverage containers. Additionally, there is no other program within the state of California that administers or imposes requirements for minimum postconsumer recycling content of beverage containers subject to CRV or for any other type of food or drink container sold in California.

Efforts to Avoid Unnecessary Duplication or Conflict with the Code of Federal Regulations

Pursuant to Government Code section 11346.2(b)(6), CalRecycle found that there are no federal laws or regulations addressing the same issues as the proposed regulations. Therefore, these regulations do not duplicate or conflict with any federal law or

regulation.