CalRecycle

Processing Payment

Description

The Department of Resources Recycling and Recovery (CalRecycle) proposed emergency regulations to amend section 2975, Subchapter 12, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR) that lays out the reasonable financial return calculation for processing payments. This change will help support beverage container recycling in California by establishing, for calendar year 2019, a reasonable financial return that takes into account rural business circumstances and other factors such as known cost increases. The Processing Payment Emergency Regulations were submitted to the Office of Administrative Law (OAL) on December 4, 2018 and approved by OAL on December 13, 2018.

Affected Regulatory Code Sections

California Code of Regulations, Title 14, Division 2, Chapter 5, Subchapter 12, Article 2, Section 2975

Current Documents

- Office of Administrative Law Notice of Approval of Emergency Regulatory Action
- Notice of Proposed Emergency Action. The notice of proposed adoption, amendment or repeal of regulation.
- Finding of Emergency. A statement of specific facts and findings that the emergency regulatory action is necessary for the immediate preservation of public peace, health, safety, or general welfare.
- Emergency Regulation Text. The regulatory text that includes proposed additions or deletions to the current regulations.
- Economic and Fiscal Impact Statement STD 399 and Economic and Fiscal Impact Statement Narrative. Copy of the economic and fiscal impact statement form and supporting documentation.

Stakeholder Input

The rulemaking comment period began on December 4, 2018 and ended on December 10, 2018.

Contact

You may contact Sharon Siozon for additional information.

Historical Information

CalRecycle engaged in emergency rulemaking in 2017 to implement a reasonable financial return for calendar year 2018. As part of that process, CalRecycle held a preliminary public workshop on October 9, 2017 for all interested parties to present the proposed changes in regulations and allow the public to provide input into the development of the proposed rulemaking and to set the reasonable financial return rates for the 2018 processing payment.

On November 16, 2017, OAL approved emergency regulations to set the reasonable financial return rates for the 2018 processing payment. The emergency regulations expired on May 16, 2018. These proposed emergency regulations will carry the reasonable financial return rates used in 2018 into 2019.

State of California
Office of Administrative Law

In re: **Department of Resources Recycling and Recovery** **Regulatory Action:** **Title 14, California Code of Regulations** **Amend section: 2975**	**NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION** **Government Code Sections 11346.1 and 11349.6** **OAL Matter Number: 2018-1204-03E** **OAL Matter Type: Emergency (E)**

This emergency rulemaking by the Department of Resources Recycling and Recovery establishes fixed, reasonable financial returns for urban and rural recycling centers for the 2019 calendar year.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 12/13/2018 and will expire on 6/12/2019. The Certificate of Compliance for this action is due no later than 6/11/2019.

Date: December 13, 2018

Steven J. Escobar
Attorney

Original: Scott Smithline, Director
Copy: Thomas Vallance

For: Debra M. Cornez
Director

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

EMERGENCY

NOTICE PUBLICATION/REGULATIONS SUBMISSION (See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2018-1204-03E

For use by Office of Administrative Law (OAL) only

2018 DEC -4 A 9:26

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

ENDORSED - FILED
In the office of the Secretary of State of the State of California

DEC 13 2018

1:57 PM

AGENCY WITH RULEMAKING AUTHORITY
Department of Resources Recycling and Recovery

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY — ACTION ON PROPOSED NOTICE: ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/Withdrawn | NOTICE REGISTER NUMBER | PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Processing Payments

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND
2975

REPEAL

TITLE(S)
14

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
☒ Emergency (Gov. Code, §11346.1(b))
☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
☐ Emergency Readopt (Gov. Code, §11346.1(h))
☐ File & Print
☐ Other (Specify)
☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
☒ Effective on filing with Secretary of State
☐ §100 Changes Without Regulatory Effect
☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
☐ Department of Finance (Form STD. 399) (SAM §6660)
☐ Fair Political Practices Commission
☐ State Fire Marshal
☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Thomas Vallance	(916) 322-4256		thomas.vallance@calrecycle.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE
11/19/2018

TYPED NAME AND TITLE OF SIGNATORY
Elliot Block, Chief Counsel

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 13 2018

Office of Administrative Law

Processing Payment Emergency Regulations Text

November 6, 2018

Underline *Permanent Additions*
~~Strikeout~~ *Permanent Deletions*

Division of Recycling
Department of Resources Recycling and Recovery
California Code of Regulations
Title 14. Natural Resources
Division 2. Department of Conservation
Chapter 5: Division of Recycling

SUBCHAPTER 12. DOR REQUIREMENTS

Article 2. Processing Fees and Processing Payments

§ 2975. REASONABLE FINANCIAL RETURN CALCULATION.

(a) The statewide average reasonable financial return for recycling centers shall be equal to the statewide average allowable costs calculated in section 2960 of this subchapter, multiplied by the average return on costs for the scrap and waste materials industry as determined from data contained in the most recent Dun and Bradstreet Standard Three Year Norm Report (Published by Dun and Bradstreet Credit Services).

(b) Notwithstanding paragraph (a), for the period of January 1, 2019 to December 31, 2019, the reasonable financial return shall be calculated as follows:

(1) The reasonable financial return shall be equal to eleven and five-tenths percent (11.5%) of the statewide average allowable costs calculated in section 2960 of this subchapter, except as follows:

(A) The reasonable financial return for recycling centers located in rural regions, as defined by Public Resources Code Section 14571(b)(2)(A), shall be equal to sixteen and six-tenths percent (16.6%) of the statewide average allowable costs calculated in section 2960 of this subchapter.

Authority: Section 14530.5(b), 14536, and 14536.1, Public Resources Code. Reference: Sections 14501(f) and (g), 14518.5 and 14575(a) and (b), Public Resources Code.

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

The Department of Resources Recycling and Recovery (CalRecycle/Department) is proposing emergency regulations to amend section 2975, Subchapter 12, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR) that lays out the reasonable financial return calculation for processing payments. This change will help support beverage container recycling in California by establishing, for calendar year 2019, a reasonable financial return that takes into account rural business circumstances and factors such as known cost increases. This will support existing recycling infrastructure by increasing the profitability of recyclers and provide convenient redemption opportunities to consumers. The term “recycler” for purposes of this rulemaking has the same definition as in Public Resources Code (PRC) section 14519.5., i.e., “recycler” means a recycling center, dropoff or collection program, or curbside program. All of these entities receive processing payments.

The Department has complied with the requirement to provide notice of the proposed emergency rulemaking pursuant to Government Code section 11346.1(a)(2).

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law (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
> Processing Payment 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 December 4, 2018, when the emergency regulations are posted on OAL’s website. The public comment period will close on December 10, 2018. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on December 10, 2018. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file.

Copies of the text, the Finding of Emergency, and all of the information upon which this proposal is based are available upon request and at our website: www.calrecycle.ca.gov/Laws/Rulemaking/. The rulemaking file is also available for review during normal business hours at the Department, 801 “K” Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Sharon Siozon, at (916) 322-1760 if you wish to review the rulemaking file in person. General or substantive questions regarding this file may also be directed to Sharon Siozon. The back-up agency contact person for this rulemaking file is Cheryl DuBose, who may be contacted at (916) 323-0728. Any technical inquiries will be referred to the appropriate staff to ensure a prompt response.

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

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

FINDING OF NECESSITY

The California Beverage Container Recycling Program (BCRP) was established as a California Redemption Value (CRV) deposit and return system to create convenient beverage container recycling opportunities in the state. Recycling centers that redeem CRV containers located throughout the state provide opportunities for consumers to return their CRV beverage containers to claim their deposit. The Department works to create and maintain a marketplace that provides consumers with convenient recycling opportunities. Tools the department uses include education and supplemental payments that include processing payments. Processing payments reimburse recyclers for the difference between the cost of recycling a pound of beverage container material and the value a recycler receives when it sells that material as scrap.

When the BCRP was created thirty years ago, the law provided for a “reasonable financial return” for recycling centers in order to insure the economic recovery of the beverage containers. This “reasonable financial return” was further clarified in the CCR section 2975 which states that “The statewide average reasonable financial return for recycling centers shall be equal to the statewide average allowable costs calculated in section 2960 of this subchapter, multiplied by the average return on costs for the scrap and waste materials industry as determined from data contained in the most recent Dun and Bradstreet Standard Three Year Norm Report (Published by Dun and Bradstreet Credit Services).” Due to adverse market conditions, the average return on costs reported by Dun and Bradstreet resulted in a negative reasonable financial return for the first time in 2017. To address that and other market factors, CalRecycle enacted emergency regulations effective November 16, 2017, to raise the reasonable financial return for calendar year 2018 to 11.5 percent for non-rural recyclers and 16.6 percent for rural region recycling centers. Because the RFRs had already been used to set the processing payments for calendar year 2018, the emergency regulations were allowed to expire by operation of law effective May 16, 2018, whereby section 2975 reverted to its previous text, which is quoted above.

The Department had anticipated that a legislative solution impacting the reasonable financial return would be enacted in 2018, but no such permanent change materialized.[1] Because no legislative solution was enacted, the department is taking this emergency rulemaking action and intends to pursue the adoption of permanent regulations in 2019.

This emergency rulemaking will, for calendar year 2019, continue to provide a higher processing payment by setting the reasonable financial return for calendar year 2019 at the same rates in effect for calendar year 2018: 11.5 percent for all recyclers except that

[1] Although vetoed by the Governor, the California Legislature passed a bill that would have codified the RFR rates implemented by the department’s 2017 regulation for the 2019 and 2020 RFRs. (SB 452 (Glazer) Sec. 6, PRC § 14575.2(a)(3). Enrolled Sept. 6, 2018 and vetoed Sept. 30, 2018.) (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB452)

a reasonable financial return of 16.6 percent would be applied to rural region recycling centers.

The Department proposes to amend or add the following sections to the California Code of Regulations, Title 14, Division 2, Chapter 5, Subchapter 12, Article 2:

Section 2975 will be amended to designate this as subsection (a) in order to add a new subsection (b).

Section 2975(b) adds a new subsection to establish a specified reasonable financial return for a limited time effective from January 1, 2019, to December 31, 2019.

Section 2975(b)(1) adds a new paragraph to authorize a reasonable financial return that is equal to eleven and five-tenths percent of the statewide allowable costs in section 2960. Section 2960 provides the categories of recycling center costs used for calculating processing payments. The eleven and five-tenths percent value reflects, in part, the impacts of minimum wage increases on recycling center costs. It is responsive to industry feedback on the continuing need for an increased reasonable financial return, and reflects the department's effort to balance recycling center profitability and the financial impact on the Beverage Container Recycling Fund.

Section 2975(b)(1)(A) adds a new clause that authorizes a reasonable financial return of sixteen and six-tenths percent for rural region recycling centers to address a lack of convenience and higher operating costs in rural regions.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code subsections (PRC) 14530.5(b), 14536, and 14536.1.

REFERENCE

Title 14 CCR amended Section 2975 is intended to implement, interpret and make specific PRC 14501(f) and (g), 14518.5, and 14575.

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. The intent of the BCRP is to provide increased and convenient beverage container redemption and recycling opportunities for consumers. This is accomplished through the establishment of the CRV for eligible beverage containers and working with industry participants such as recyclers and processors who are certified by the Department.

Section 14501(f) of the Act establishes the purpose of the BCRP, including to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities. The responsibility to provide convenient, efficient, and economical redemptions opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department (Section 14501(g)). Section 14518.5 defines the term "processing payment." Section 14575 establishes the processing fee, paid by beverage manufacturers and offset by the Beverage Container Recycling Fund (Fund), and the processing payment, paid to recyclers.

CalRecycle annually establishes the reasonable financial return (RFR) each January, which is applied to the calculation of the processing payment. The rates are determined consistent with the Act and a long-standing, defined regulatory calculation. The source used to determine the RFR, as specified in regulation, is the most recent average net profit ratio of businesses classified as scrap and waste materials as reported by Dun and Bradstreet. For the first time since the BCRP began using the Dun and Bradstreet indicator in 2001, the RFR was a negative value for 2017, the RFR was calculated to be -5.85 percent of allowable costs, a reflection of the overall losses, rather than profits, of the recycling industry. This resulted in lower processing payments to certified entities than the amount necessary to cover the cost of recycling. At the same time, low prices for scrap material, along with other factors such as difficulty in finding locations willing to host recycling centers, led some recycling centers to close, leaving communities with fewer places for people to redeem CRV containers. To address those circumstances, CalRecycle enacted emergency regulations effective November 16, 2017 that raised the calendar year 2018 RFR to 11.5 percent for non-rural recyclers and 16.6 percent for rural region recycling centers.

The department's efforts to improve recycling center profitability and stem their closure through an increased 2018 RFR appears to be working. The number of operational recycling centers and the rate of the RFR shows an extremely positive correlation (0.70) for the time period of January 2016 through December 2017. During that time, when an RFR of lower than 1% was in place, the number of operational recycling centers declined by an average of 18 recycling centers per month for a total decline of 424 operating recycling centers for the two year period (from 2055 down to 1631). After two years of low RFRs, recyclers reported they could not continue operating under the current system, and those reports were substantiated by the number of recycling center closures in 2016 and 2017. Once the increased RFRs of 11.5 and 16.6% were implemented for 2018, the number of operational recycling centers declined by an average of only 5 centers per month during January through October 2018 (from 1,621 down to 1,570). That's an overall decline of 51 recycling centers for those 10 months of higher RFRs, only about 5 a month, instead of 18. While the increased 2018 RFR implemented by the department's emergency regulations did not completely reverse the trend in recycling center closures, it helped slow it down and helped keep open up to 144 recycling centers that might have closed in 2018 if the prior 2-year trend had persisted.

The market pressures of 2017 have lingered into 2018 and are projected to continue into 2019. To provide more support to the recycling industry than what would be provided under the current regulations, CalRecycle is proposing to continue providing an 11.5 percent RFR for non-rural recyclers and a 16.6 percent RFR for rural region recycling centers when calculating processing payments for 2019. An additional RFR is assigned to rural recycling centers based on operating costs for recycling centers in rural areas being higher. These percentages reflect, in part, recent and expected state minimum wage increases that would otherwise not be captured until the department's next periodic survey of recycling center costs. Further, in response to feedback from industry, the department has selected these percentages in an attempt to balance the profitability of recycling centers and financial impact on the Fund.

Between 1988 and 2016, minimum wage increases occurred with relative infrequency, averaging about 33 months between each increase. Beginning on January 1, 2016, minimum wage increases have been scheduled every 12 months, with the last currently scheduled increase occurring January 1, 2023. The 2018 minimum wage of $11.00 per hour is scheduled to increase a full dollar to $12.00/hour for 2019. Due to the logistics of gathering data, the cost of recycling, measured via a survey conducted by the department every two years, is applied to the processing payment calculation either two or three years after the year that the costs are measured. With annual increases in the minimum wage, the measured cost of recycling is not keeping current with increases in labor costs. A broad inflation adjustment is applied annually to the measured cost of recycling. To improve the accuracy of the cost of recycling applied to the processing payment, the department will incorporate a minimum wage adjustment in the setting of the RFRs to more timely reflect the annual increases in the minimum wage.

The Department finds that an emergency exists to amend existing regulations in order to implement statutory mandates of PRC section 14575. The proposed regulations would amend section 2975 of the CCR Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling, Subchapter 12, Article 2. The adoption of these regulations is deemed to be an emergency pursuant to PRC section 14536.1 which provides that "if the department determines that it is necessary to adopt or amend regulations to implement Section 14575, the department may adopt or amend those regulations as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)."

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.

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

This change will result in approximately $15.2 million additional expenditure for processing payments to be funded by a $2.8 million increase in processing fee revenue paid by beverage manufacturers and an additional $12.8 million in transfers from the Fund to the Processing Fee accounts as prescribed in PRC section 14575.

The proposed emergency regulations will not result in either costs or savings to any other State Agency, local agencies or school districts. Approximately 4 percent of processing payment recipients are local government entities who run recycling programs. The total amount of approximately $608,000 distributed to these entities over the course of these emergency regulations will not have a significant impact. Further, these proposed emergency regulations will not result in any non-discretionary cost or savings to any local agencies, nor will they result in cost or savings to federal funding to the State.

DOCUMENTS RELIED UPON

The Department utilizes two sources from the California Department of Industrial Relations for the minimum wage costs:

Present and future: https://www.dir.ca.gov/dlse/faq_minimumwage.htm

Historical: https: //www.dir.ca.gov/iwc/minimumwagehistory.htm

FINDING OF EMERGENCY

CALIFORNIA CODE OF REGULATIONS

TITLE 14. NATURAL RESOURCES

DIVISION 2. DEPARTMENT OF CONSERVATION

CHAPTER 5. DIVISION OF RECYCLING

FINDING OF EMERGENCY

The Department of Resources Recycling and Recovery (CalRecycle/Department) is proposing emergency regulations to amend section 2975, Subchapter 12, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR) that lays out the reasonable financial return calculation for processing payments. This change will help support beverage container recycling in California by establishing, for calendar year 2019, a reasonable financial return that takes into account rural business circumstances and factors such as known cost increases. This will support existing recycling infrastructure by increasing the profitability of recyclers and provide convenient redemption opportunities to consumers. The term “recycler” for purposes of this rulemaking has the same definition as in Public Resources Code (PRC) section 14519.5., i.e., “recycler” means a recycling center, dropoff or collection program, or curbside program. All of these entities receive processing payments.

The adoption of these regulations is deemed to be an emergency pursuant to PRC sections 14536.1 which provides that “if the department determines that it is necessary to adopt or amend regulations to implement Section 14575, the department may adopt or amend those regulations as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code."

FINDING OF NECESSITY

The California Beverage Container Recycling Program (BCRP) was established as a California Redemption Value (CRV) deposit and return system to create convenient beverage container recycling opportunities in the state. Recycling centers that redeem CRV containers located throughout the state provide opportunities for consumers to return their CRV beverage containers to claim their deposit. The Department works to create and maintain a marketplace that provides consumers with convenient recycling opportunities. Tools the department uses include education and supplemental payments that include processing payments. Processing payments reimburse recyclers for the difference between the cost of recycling a pound of beverage container material and the value a recycler receives when it sells that material as scrap.

When the BCRP was created thirty years ago, the law provided for a "reasonable financial return" for recycling centers in order to insure the economic recovery of the beverage containers. This "reasonable financial return" was further clarified in the CCR section 2975 which states that "The statewide average reasonable financial return for recycling centers shall be equal to the statewide average allowable costs calculated in section 2960 of this subchapter, multiplied by the average return on costs for the scrap and waste materials industry as determined from data contained in the most recent Dun and Bradstreet Standard Three Year Norm Report (Published by Dun and Bradstreet Credit Services)." Due to adverse market conditions, the average return on costs reported by Dun and Bradstreet resulted in a negative reasonable financial return for the first time in 2017. To address that and other market factors, CalRecycle enacted emergency regulations effective November 16, 2017, to raise the reasonable financial return for calendar year 2018 to 11.5 percent for non-rural recyclers and 16.6 percent for rural region recycling centers. Because the RFRs had already been used to set the processing payments for calendar year 2018, the emergency regulations were allowed to expire by operation of law effective May 16, 2018, whereby section 2975 reverted to its previous text, which is quoted above.

The Department had anticipated that a legislative solution impacting the reasonable financial return would be enacted in 2018, but no such permanent change materialized.[1] Because no legislative solution was enacted, the department is taking this emergency rulemaking action and intends to pursue the adoption of permanent regulations in 2019.

This emergency rulemaking will, for calendar year 2019, continue to provide a higher processing payment by setting the reasonable financial return for calendar year 2019 at the same rates in effect for calendar year 2018: 11.5 percent for all recyclers except that a reasonable financial return of 16.6 percent would be applied to rural region recycling centers.

The Department proposes to amend or add the following sections to the California Code of Regulations, Title 14, Division 2, Chapter 5, Subchapter 12, Article 2:

Section 2975 will be amended to designate this as subsection (a) in order to add a new subsection (b).

Section 2975(b) adds a new subsection to establish a specified reasonable financial return for a limited time effective from January 1, 2019, to December 31, 2019.

Section 2975(b)(1) adds a new paragraph to authorize a reasonable financial return that is equal to eleven and five-tenths percent of the statewide allowable costs in section 2960. Section 2960 provides the categories of recycling center costs used for calculating processing payments. The eleven and five-tenths percent value reflects, in part, the impacts of minimum wage increases on recycling center costs. Further, in

[1] Although vetoed by the Governor, the California Legislature passed a bill that would have codified the RFR rates implemented by the department's 2017 regulation for the 2019 and 2020 RFRs. (SB 452 (Glazer) Sec. 6, PRC § 14575.2(a)(3). Enrolled Sept. 6, 2018 and vetoed Sept. 30, 2018.) (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB452)

response to feedback from industry that the RFR needs to be increased, the department has selected these percentages in an attempt to balance the profitability of recycling centers and financial impact on the Fund. A more detailed description of how the percentages were calculated can be found in the Informative Digest, below.

Section 2975(b)(1)(A) adds a new clause that authorizes a reasonable financial return of sixteen and six-tenths percent for rural region recycling centers to address higher operating costs in rural regions.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code subsections (PRC) 14530.5(b), 14536, and 14536.1.

REFERENCE

Title 14 CCR amended Section 2975 is intended to implement, interpret and make specific PRC 14501(f) and (g), 14518.5, and 14575.

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. The intent of the BCRP is to provide increased and convenient beverage container redemption and recycling opportunities for consumers. This is accomplished through the establishment of the CRV for eligible beverage containers and working with industry participants such as recyclers and processors who are certified by the Department.

Section 14501(f) of the Act establishes the purpose of the BCRP, including to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities. The responsibility to provide convenient, efficient, and economical redemptions opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the

Department (Section 14501(g)). Section 14518.5 defines the term “processing payment.” Section 14575 establishes the processing fee, paid by beverage manufacturers and offset by the Beverage Container Recycling Fund (Fund), and the processing payment, paid to recyclers.

CalRecycle annually establishes the reasonable financial return (RFR) each January, which is applied to the calculation of the processing payment. The rates are determined consistent with the Act and a long-standing, defined regulatory calculation. The source used to determine the RFR, as specified in regulation, is the most recent average net profit ratio of businesses classified as scrap and waste materials as reported by Dun and Bradstreet. For the first time since the BCRP began using the Dun and Bradstreet indicator in 2001, the RFR was a negative value for 2017. The RFR was calculated to be -5.85 percent of allowable costs, a reflection of the overall losses, rather than profits, of the recycling industry. This resulted in lower processing payments to certified entities than the amount necessary to cover the cost of recycling. At the same time, low prices for scrap material, along with other factors such as difficulty in finding locations willing to host recycling centers, led some recycling centers to close, leaving communities with fewer places for people to redeem CRV containers. To address those circumstances, CalRecycle enacted emergency regulations effective November 16, 2017 that raised the calendar year 2018 RFR to 11.5 percent for non-rural recyclers and 16.6 percent for rural region recycling centers.

The department's efforts to improve recycling center profitability and stem their closure through an increased 2018 RFR appears to be working. The number of operational recycling centers and the rate of the RFR shows an extremely positive correlation (0.70) for the time period of January 2016 through December 2017. During that time, when an RFR of lower than 1% was in place, the number of operational recycling centers declined by an average of 18 recycling centers per month for a total decline of 424 operating recycling centers for the two year period (from 2055 down to 1631). After two years of low RFRs, recyclers reported they could not continue operating under the current system, and those reports were substantiated by the number of recycling center closures in 2016 and

2017. Once the increased RFRs of 11.5 and 16.6% were implemented for 2018, the number of operational recycling centers declined by an average of only 5 centers per month during January through October 2018 (from 1,621 down to 1,570). That's an overall decline of 51 recycling centers for those 10 months of higher RFRs, only about 5 a month, instead of 18. While the increased 2018 RFR implemented by the department's emergency regulations did not completely reverse the trend in recycling center closures, it helped slow it down and helped keep open up to 144 recycling centers that might have closed in 2018 if the prior 2-year trend had persisted.

The market pressures of 2017 have lingered into 2018 and are projected to continue into 2019. To provide more support to the recycling industry than what would be provided under the current regulations, CalRecycle is proposing to continue providing an 11.5 percent RFR for non-rural recyclers and a 16.6 percent RFR for rural region recycling centers when calculating processing payments for 2019. An additional RFR is assigned to rural recycling centers based on operating costs for recycling centers in rural areas being higher. These percentages reflect, in part, recent and expected state minimum wage increases that would otherwise not be captured until the department’s next periodic survey of recycling center costs. Further, in response to feedback from industry that the RFR needs to be increased, the department has selected these percentages in an attempt to balance the profitability of recycling centers against financial impacts to the Fund.

What follows is a description of the methodology used to arrive at the percentages reflected in the department's 2017 emergency regulation, which are being carried forward with this rulemaking.

> A base of 5% RFR for urban recycling centers was calculated as the lowest RFR that could be given while still keeping processing payments at approximately the same level for 2018 as they were in FY 2016-17 and ensuring a reasonable financial return. CalRecycle anticipated lower processing payments in 2018 based on a prior decrease of 7% in PET cost per ton from 2012 to 2014 as

published in the 2014 Cost Survey. Additionally, in the year 2017, CalRecycle heard from consumers and received considerable media coverage on consumers inability to recycle due recent recycling center closures (partly caused by low processing payments). Correspondingly, CalRecycle saw the recycling rate drop below 80% for the first time in many years. To address the decline in recycling infrastructure and loss of convenient recycling options, CalRecycle sought to set an RFR that would encourage recycling centers to stay in business and that would assure them at least the same processing payments as the prior year and provide stability to a market that has become increasingly volatile in recent months.

The dollar amount of processing payments for FY 2016-17 was taken and used as the base for calculating 2018 processing payments. The scrap prices were kept the same, but 2017 lower cost per ton estimations were used to calculate the difference between scrap prices and the cost of handling material to determine the amount of processing payment needed for a recycling center to break even. Due to lower cost estimations, processing payments for 2018 were cut by $10 million. The RFR was then increased incrementally from -5.85% (2017 RFR) to 5% (proposed RFR) until the amount of processing payments was equal to FY 2016-17, which resulted in an increase of 10.85% RFR and resulting in an overall 5% RFR (-5.85 + 10.85 = 5).

The additional 5% RFR given to rural recycling centers was based on an observed cost differential for urban and rural recycling centers recycling one ton of PET as measured by the CalRecycle 2014 Cost Survey. The 2014 average cost of recycling PET (the most prevalent material recycled) was $410/ton for urban recycling centers and $715/ton for rural recycling centers. (The department chose to make the rural RFR double that of non-rural). CalRecycle determined that because operating costs were higher for rural centers compared to urban centers, a higher RFR was needed to help ensure fiscal feasibility of rural recycling center operations for provide redemption opportunities that otherwise may not have existed.

A minimum wage adjustment of 1.4% and 1.5% was added to the base 5%/10% proposed RFR to bring the proposed RFR to 6.4% (urban) and 11.5% (rural) (see below). After proposing a 6.4%/11.5% RFR at a public meeting, stakeholders requested an alternate proposal of 11.5%/16.6% citing additional needed financial support. In the spirit of collaborative policy-making and in an attempt to address stakeholder needs, the Department agreed to put forth a proposal for a 2018 RFR of 11.5%/16.6% for the period of one year until more permanent solutions can be made.

Between 1988 and 2016, minimum wage increases occurred with relative infrequency, averaging about 33 months between each increase. Beginning on January 1, 2016, minimum wage increases have been scheduled every 12 months, with the last currently scheduled increase occurring January 1, 2023. The 2018 minimum wage of $11.00 per hour is scheduled to increase a full dollar to $12.00/hour for 2019. Due to the logistics of gathering data, the cost of recycling, measured via a survey conducted by the department every two years, is applied to the processing payment calculation either two or three years after the year that the costs are measured. With annual increases in the minimum wage, the measured cost of recycling is not keeping current with increases in labor costs. A broad inflation adjustment is applied annually to the measured cost of recycling. To improve the accuracy of the cost of recycling applied to the processing payment, the department will incorporate a minimum wage adjustment in the setting of the RFRs to more timely reflect the annual increases in the minimum wage.

The following methodology was used to calculate the minimum wage portion of the 2018 RFR for the department's 2017 emergency regulation, which is being carried forward with this rulemaking.

The general formula for the minimum wage adjustment is (% increase in minimum wage)*(proportion of allowable costs labor)*(proportion of payroll impacted)

The percent increase in minimum wage equals the minimum wage in effect for the year the rate is calculated divided by the minimum wage in effect during the year costs were measured.

The proportion of allowable costs for labor is intended to isolate only the type of costs that are directly impacted by a change in minimum wage; for example, there is little expectation that costs such as rent, utilities, or supplies would be directly impacted by an increase in labor costs, and any such change in other costs is intended to be reflected by the COLA.

The proportion of payroll impacted is the proportion of all labor hours that were paid at or below minimum wage reflecting that not all employee wages will automatically increase.

The proportion of allowable costs labor and proportion payroll directly impacted are provided from the cost survey.

The table below details the calculation of the minimum wage adjustment based on costs measured in 2016 to be applied to processing payments in effect for 2018 (2017 is shown for continuity).[2]

Year	Minimum Wage ($/hr.)	% Increase in Minimum Wage	Proportion Allowable Costs Labor (1)	Proportion of Payroll Impacted	Minimum Wage Adjustment
2016	$10.00				
2017	$10.50	5.0%	59.2%	23.0%	0.68%
2018	$11.00	10.0%	59.2%	23.0%	**1.36%**

(1) Based on 2014 measured costs

The Department finds that an emergency exists to amend existing regulations in order to implement statutory mandates of PRC section 14575. The proposed regulations would amend section 2975 of the CCR Title 14. Natural Resources, Division 2.

[2] As previously mentioned, the 2019 minimum wage is increasing by $1.00 over 2018 to $12 per hour.

Department of Conservation, Chapter 5. Division of Recycling, Subchapter 12, Article 2. The adoption of these regulations is deemed to be an emergency pursuant to PRC section 14536.1 which provides that “if the department determines that it is necessary to adopt or amend regulations to implement Section 14575, the department may adopt or amend those regulations as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)”.

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.

SPECIFIC AGENCY STATUTORY REQUIREMENTS

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

LOCAL MANDATE DETERMNIATION

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

FISCAL IMPACT ESTIMATE

This change will result in approximately $15.2 million additional expenditure for processing payments to be funded by a $2.8 million increase in processing fee revenue paid by beverage manufacturers and an additional $12.8 million in transfers from the Fund to the Processing Fee accounts as prescribed in PRC section 14575.

The proposed emergency regulations will not result in either costs or savings to any other State Agency, local agencies or school districts. Approximately 4 percent of processing payment recipients are local government entities who run recycling programs. The total amount of approximately $608,000 distributed to these entities over the course of these emergency regulations will not have a significant impact. Further, these proposed emergency regulations will not result in any non-discretionary cost or savings to any local agencies, nor will they result in cost or savings to federal funding to the State.

DOCUMENTS RELIED UPON

The Department utilizes two sources from the California Department of Industrial Relations for the minimum wage costs:

Present and future: https://www.dir.ca.gov/dlse/faq_minimumwage.htm
Historical: https: //www.dir.ca.gov/iwc/minimumwagehistory.htm

NOTICE OF REGULATORY ACTION

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

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

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.

Processing Payment Emergency Regulations Proposed Text

November 6, 2018

Underline *Proposed Permanent Additions*
~~Strikeout~~ *Proposed Permanent Deletions*

Division of Recycling
Department of Resources Recycling and Recovery
California Code of Regulations
Title 14. Natural Resources
Division 2. Department of Conservation
Chapter 5: Division of Recycling

SUBCHAPTER 12. DOR REQUIREMENTS

Article 2. Processing Fees and Processing Payments

§ 2975. REASONABLE FINANCIAL RETURN CALCULATION.

(a) The statewide average reasonable financial return for recycling centers shall be equal to the statewide average allowable costs calculated in section 2960 of this subchapter, multiplied by the average return on costs for the scrap and waste materials industry as determined from data contained in the most recent Dun and Bradstreet Standard Three Year Norm Report (Published by Dun and Bradstreet Credit Services).

(b) Notwithstanding paragraph (a), for the period of January 1, 2019 to December 31, 2019, the reasonable financial return shall be calculated as follows:

(1) The reasonable financial return shall be equal to eleven and five-tenths percent (11.5%) of the statewide average allowable costs calculated in section 2960 of this subchapter, except as follows:

(A) The reasonable financial return for recycling centers located in rural regions, as defined by Public Resources Code Section 14571(b)(2)(A), shall be equal to sixteen and six-tenths percent (16.6%) of the statewide average allowable costs calculated in section 2960 of this subchapter.

Authority: Section 14530.5(b), 14536, and 14536.1, Public Resources Code. Reference: Sections 14501(f) and (g), 14518.5 and 14575(a) and (b), Public Resources Code.

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
Dept of Resources Recycling and Reco	Sharon Siozon	sharon.siozon@calrecycle.ca.g	916-322-1760
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400			NOTICE FILE NUMBER
Processing Payment Emergency Regulations			Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

☐ a. Impacts business and/or employees
☐ b. Impacts small businesses
☐ c. Impacts jobs or occupations
☐ d. Impacts California competitiveness
☐ e. Imposes reporting requirements
☐ f. Imposes prescriptive instead of performance
☐ g. Impacts individuals
☐ h. None of the above (Explain below):

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The ______________ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

☐ Below $10 million
☐ Between $10 and $25 million
☐ Between $25 and $50 million
☐ Over $50 million *[If the economic impact is over $50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: ______________

Describe the types of businesses (Include nonprofits): ______________

Enter the number or percentage of total businesses impacted that are small businesses: ______________

4. Enter the number of businesses that will be created: ______________ eliminated: ______________

Explain: ______________

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): ______________

6. Enter the number of jobs created: ______________ and eliminated: ______________

Describe the types of jobs or occupations impacted: ______________

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: ______________

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE
ECONOMIC AND FISCAL IMPACT STATEMENT
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ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ ____________

   a. Initial costs for a small business: $ ____________ Annual ongoing costs: $ ____________ Years: ________

   b. Initial costs for a typical business: $ ____________ Annual ongoing costs: $ ____________ Years: ________

   c. Initial costs for an individual: $ ____________ Annual ongoing costs: $ ____________ Years: ________

   d. Describe other economic costs that may occur: ____________

2. If multiple industries are impacted, enter the share of total costs for each industry: ____________

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* $ ____________

4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

   If YES, enter the annual dollar cost per housing unit: $ ____________

   Number of units: ____________

5. Are there comparable Federal regulations? ☐ YES ☐ NO

   Explain the need for State regulation given the existence or absence of Federal regulations: ____________

   Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ ____________

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: ____________

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

   Explain: ____________

3. What are the total statewide benefits from this regulation over its lifetime? $ ____________

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: ____________

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: ____________

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: $ ____________ Cost: $ ____________

Alternative 1: Benefit: $ ____________ Cost: $ ____________

Alternative 2: Benefit: $ ____________ Cost: $ ____________

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: ____________

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NO

Explain: ____________

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed $10 million?** ☐ YES ☐ NO

If YES, complete E2. and E3
If NO, skip to E4

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: ____________

Alternative 2: ____________

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost $ ____________ Cost-effectiveness ratio: $ ____________

Alternative 1: Total Cost $ ____________ Cost-effectiveness ratio: $ ____________

Alternative 2: Total Cost $ ____________ Cost-effectiveness ratio: $ ____________

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding $50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: ____________

The incentive for innovation in products, materials or processes: ____________

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: ____________

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE
ECONOMIC AND FISCAL IMPACT STATEMENT
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FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ ______________

☐ a. Funding provided in ______________

Budget Act of ______________ or Chapter ______________ , Statutes of ______________

☐ b. Funding will be requested in the Governor's Budget Act of ______________

Fiscal Year: ______________

☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ ______________

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

☐ a. Implements the Federal mandate contained in ______________

☐ b. Implements the court mandate set forth by the ______________ Court.

Case of: ______________ vs. ______________

☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. ______________

Date of Election: ______________

☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: ______________

☐ e. Will be fully financed from the fees, revenue, etc. from: ______________

Authorized by Section: ______________ of the ______________ Code;

☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in ______________

☐ 3. Annual Savings. (approximate)

$ ______________

☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

☐ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

☒ 6. Other. Explain An estimated $15.2 million increase in processing payment subsidy will be paid to certified recycling progr businesses. Approximate 4% of recipients are local government entities receiving a total of $608,000.

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE
ECONOMIC AND FISCAL IMPACT STATEMENT
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FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

[X] 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ 7.6 million

It is anticipated that State agencies will:

[ ] a. Absorb these additional costs within their existing budgets and resources.

[X] b. Increase the currently authorized budget level for the 2018-19 Fiscal Year

[ ] 2. Savings in the current State Fiscal Year. (Approximate)

$ ________

[ ] 3. No fiscal impact exists. This regulation does not affect any State agency or program.

[X] 4. Other. Explain The effective period of the proposed regulation is from Jan-Dec 2019. The total fiscal impact is approximately $15.2 million: $7.6 million in FY 2018-19 and $7.6 million in FY 2019-20. See Attachment 1.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

[ ] 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ ________

[ ] 2. Savings in the current State Fiscal Year. (Approximate)

$ ________

[X] 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

[ ] 4. Other. Explain ________

FISCAL OFFICER SIGNATURE	DATE
[signature]	11/13/18

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY	DATE
[signature]	11/19/18

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER	DATE

Attachment 1

STD. 399 ECONOMIC AND FISCAL IMPACT STATEMENT NARRATIVE

Background

The Department of Resources Recycling and Recovery (CalRecycle/Department) is proposing emergency regulations to amend section 2975, Subchapter 12, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR) that lays out the reasonable financial return calculation for processing payments. This change will help support beverage container recycling in California by establishing, for calendar year 2019, a reasonable financial return that takes into account rural business circumstances and factors such as known cost increases. This emergency rulemaking will, for calendar year 2019, provide a higher processing payment by setting the reasonable financial return for calendar year 2019 at the same rates in effect for calendar year 2018: 11.5 percent for all recyclers except that a reasonable financial return of 16.6 percent would be applied to rural region recycling centers.

The Department had anticipated that a legislative solution impacting the reasonable financial return would be enacted in 2018, but no such permanent change materialized. Because no legislative solution was enacted, the department is taking this emergency rulemaking action and intends to pursue the adoption of permanent regulations in 2019.

The California Beverage Container Recycling Program (Program) was established as a California Redemption Value (CRV) deposit and return system to create convenient beverage container recycling opportunities in the state. Recyclers that redeem CRV containers located throughout the state provide opportunities for consumers to return their CRV beverage containers to claim their deposit. The term “recycler” for purposes of this rulemaking has the same definition as in PRC §14519.5., i.e., “recycler” means a recycling center, dropoff or collection program, or curbside program which all receive processing payments. The Department works to create and maintain a marketplace that provides consumers with convenient recycling opportunities. Tools the department uses include education and supplemental payments that include processing payments. Processing payments reimburse recycling centers for the difference between the cost of recycling a pound of beverage container material and the value a recycling center receives when it sells that material as scrap.

When the Program was created thirty years ago, the law provided for a “reasonable financial return” to recycling centers in order to insure the economic recovery of the beverage containers. This “reasonable financial return” was further clarified in the CCR section 2975 which states that "The statewide average reasonable financial return for recycling centers shall be equal to the statewide average allowable costs calculated in section 2960 of this subchapter, multiplied by the average return on costs for the scrap and waste materials industry as determined from data contained in the most recent Dun and Bradstreet Standard Three Year Norm Report (Published by Dun and Bradstreet Credit Services)." Due to adverse market conditions, the average return on costs reported by Dun and Bradstreet resulted in a negative reasonable financial return for the first time in 2017. With continued adverse market conditions, the department does not anticipate significant improvement in the average return on costs for 2019.

I. STD 399 Fiscal Impact Statement – Line Item Detail

Part A. FISCAL EFFECT ON LOCAL GOVERNMENT

There will be no significant fiscal impact on local government. This regulation will increase payments from the state in the form of processing payments made to certified or registered recyclers.

An estimated $15.2 million increase in processing payment subsidy will be paid to certified recyclers. Approximate 4 percent of recipients are local government entities receiving a total of $608,000.

Part B. FISCAL EFFECT ON STATE GOVERNMENT

The regulation is proposed to be in effect from January to December 2019. The estimated increase in processing payment expenditure would be $15.2 million, provided from an estimated $2.8 million increase in processing fee revenue and an estimated $12.8 million increase in transfers from the Beverage Container Recycling Fund (Fund 0133) to the Processing Fee accounts. The expenditures for processing payments and the transfers from Fund 0133 are continuously appropriated without regard to fiscal year pursuant to Public Resources Code Sections 14580(c) and 14581(a)(5)(B).

Part C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

There will be no fiscal impact on any federally funded State agency or program.