

## Department of Resources Recycling and Recovery

### AB 962 Bottle Washer Processor

#### NOTICE OF PROPOSED EMERGENCY ACTION

The Department of Resources Recycling and Recovery (CalRecycle) is proposing emergency regulations to amend sections 2000(a)(4), 2010(a), 2045, 2110, 2400(b) and adopt sections 2000(a)(3.7) and 2421, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR) that lays out the general requirements and certification process for a bottle washer processor.

CalRecycle has complied with the requirement to provide notice of the proposed emergency rulemaking pursuant to Government Code section 11346.1(a)(2) and Title 1, CCR, section 50(b)(3)(A).

In compliance with Title 1, CCR, section 48, the following statement is included in this document: 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 regulation 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 five calendar day written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed emergency amendments to CalRecycle. Written comments, which offer a recommendation and/or objection, or support 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 website. 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](mailto:staff@oal.ca.gov).

When submitting a comment to OAL, a copy of the comment must also be submitted to CalRecycle in one of the following ways:

- CalRecycle's public comment portal, which can be accessed here: [AB 962 Bottle Washer Processor Emergency Regulations 5-Day Comment Period](#);
- via email to [regulations@calrecycle.ca.gov](mailto:regulations@calrecycle.ca.gov)

- or via email to:

Donnet McFarlane  
Bottle Washer Processor Emergency Regulations  
Department of Resources Recycling and Recovery, Regulations Unit  
1001 "I" Street, MS-24B  
Sacramento, CA 95814

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

The public comment period will commence on January 11, 2024 when the emergency regulations are posted on OAL's website. The public comment period will close on January 16, 2024. **Written comments should be sent to OAL and CalRecycle and received before the close of the public comment period, no later than 11:59 PM on January 16, 2024.** Additionally, CalRecycle requests that written comments reference a subsection or section of the proposed emergency action. Written comments received by CalRecycle after the close of the public comment period will not be responded to in the rulemaking file.

Copies of the proposed regulation text, the Finding of Emergency, and all of the information upon which this proposal is based are available upon request and on CalRecycle's website accessible at the following internet address: [www.calrecycle.ca.gov/Laws/Rulemaking/](http://www.calrecycle.ca.gov/Laws/Rulemaking/). The rulemaking file is also available for review during normal business hours at CalRecycle, 1001 I Street, 23rd Floor, Sacramento, California. Please contact the agency contact person, Donnet McFarlane, at (916) 327-0089 or [regulations@calrecycle.ca.gov](mailto:regulations@calrecycle.ca.gov), or you wish to review the rulemaking file in person.

General or substantive questions regarding this file may also be directed to Donnet McFarlane, at (916) 327-0089 or [regulations@calrecycle.ca.gov](mailto:regulations@calrecycle.ca.gov) .

## **FINDING OF EMERGENCY**

The adoption of these regulations is deemed to be an emergency pursuant to Public Resources Code (Pub. Res. Code) section 14536(b)(1), 14536(b)(2) and 14539 which provides that:

"14536(b) (1) The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14549.2, 14549.7, 14550, 14561, 14574, 14575, 14585, 14588.1, 14588.2, and 14591."

(2) Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2

of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the director.”

CalRecycle is proposing emergency regulations to implement PRC section 14539 as amended by AB 962. CalRecycle is proposing to amend specifically sections 2000(a)(4), 2010(a), 2045, 2110, 2400(b) and adopt sections 2000(a)(3.7) and 2421, Chapter 5, Division 2, Title 14, of the California Code of Regulations (CCR) that lay out the general requirements and certification process for a bottle washer processor. The term “bottle washer processor” means a person who accepts empty reusable beverage containers in this state and is responsible for cancelling empty reusable beverage containers in the manner prescribed in section 2000(a)(4)(B)(ii) of these regulations. A bottle washer processor shall be subject to the requirements in these regulations applicable to processors, except as otherwise specified in these regulations. This change will help support beverage container recycling in California by establishing a bottle washer processor for the purpose of canceling a reusable beverage container.

## **FINDING OF NECESSITY**

Assembly Bill (AB) 962 (Kamlager, Chapter 502, Statutes of 2021) authorizes CalRecycle to authorize a processor to satisfy that cancellation requirement by washing a reusable beverage container or transferring a reusable beverage container for subsequent washing to a processor approved by CalRecycle pursuant to Pub. Res. Code section 14539(d)(7)(B). The bill also authorizes CalRecycle to certify additional models of processors and adopt standards for the certification and operation of those processors to implement that provision by January 1, 2024 pursuant to Pub. Res. Code section 14539(f).

CalRecycle proposes to amend the following sections to the California Code of Regulations, Title 14, Division 2, Chapter 5:

Section 2000(a)(4) will be amended to include washing by a bottle washer processor. This amendment is necessary as there is no current regulation that allows washing by a bottle washer processor as a form of cancellation. Section 2000 (a)(4)(B)(i) also includes a grammatical fix adding the word “in” between the words “crushed” and “size”, which is a non-substantive change.

Section 2010(a) will be amended to allow the certification procedure to add a new type of certification as a bottle washer processor, or a processor to be authorized to wash bottles. All applicants must meet the requirements to be certified to operate as a bottle

washer processor. This amendment is necessary because current regulations do not allow for the certification of a processor as a bottle washer processor or a processor to cancel reusable beverage containers.

Section 2045 will be amended to allow submittal of a certification application to apply to be certified as a bottle washer processor. This amendment is necessary to allow a person to apply for certification as a bottle washer processor in the same manner as other certification applications submitted to the Department.

Section 2110 will be amended to allow a bottle washer processor to issue an authorization to cancel to a processor by transferring reusable beverage containers to the processor. Additionally, Section 2110 will be amended to allow a processor to issue an authorization to cancel to a bottle washer processor by transferring reusable beverage containers to the bottle washer processor. The proposed amendment will ensure consistency between a bottle washer processor and a non-bottle washer processor. Without these amendments a non-bottle washer processor engaging in similar cancellation activities as a bottle washer processor would have the authority to issue or receive an authorization to cancel for the same activity that a bottle washer processor could not.

Section 2400(b) will be amended to allow a bottle washer processor to reject a shipment of beverage containers that contains beverage containers not capable of being washed and refilled. A bottle washer processor needs to be able to reject containers that are damaged or broken and not capable of being washed for refill or sale by a beverage manufacturer without which a bottle washer processor would be required to pay program payments for material that cannot be cancelled by the bottle washer processor.

Additionally, CalRecycle proposes to adopt the following sections to Title 14, CCR, Division 2, Chapter 5:

Section 2000(a)(3.7) will be added to include a definition for a “bottle washer processor”. This definition is necessary as there is no current regulation that defines a bottle washer processor.

Section 2421 will be added to include a new cancellation verification procedure for a reusable beverage container. This regulation is necessary for CalRecycle to be able to verify whether a reusable beverage container was cancelled a required by PRC section 14539(d)(7)(B).

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT OR DOCUMENTS RELIED UPON**

CalRecycle utilized the following sources in the development of the proposed regulations:

- Attachment 1: Economic and Fiscal Impact Statement (STD 399)

## **AUTHORITY**

These regulations are submitted pursuant to CalRecycle's authority under Pub. Res. Code sections 14536 and 14539(f).

## **REFERENCE**

Title 14 CCR amended sections 2000(a)(4), 2010(a), 2110 and 2400(b) and adopted sections 2000(a)(3.7) and 2421. These changes are intended to implement, interpret and make specific Pub. Res. Code sections 14539(d)(7)(B) and (f).

## **INFORMATIVE DIGEST**

The California Beverage Container Recycling and Litter Reduction Act, AB 2020/Margolin, Chapter 1290, Statutes of 1986 (Act), created the Beverage Container Recycling Program (BCRP) and established the Division of Recycling to administer the BCRP. The intent of the Act is to provide increased and convenient beverage container redemption and recycling opportunities for consumers. This is accomplished through the establishment of a fee called the California Refund Vale (CRV) for eligible beverage containers and working with industry participants such as recyclers and processors who are certified by the Department. PRC section 14501(f) establishes the legislative intent 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 (PRC section 14501(g)).

Existing law, PRC Section 14518 defines the term "processor." PRC section 14539 establishes the requirements for processors with PRC 14539(d)(7) mandating that a processor take the actions necessary and approved by the department to cancel containers to render them unfit for redemption. Prior to the passage of Assembly Bill No. 962 (2020- 2021 Regular Session) (AB 962), CalRecycle did not have authority to permit cancellation of a reusable beverage container by washing by existing processors nor certify additional models of processors to cancel reusable beverage containers.

AB 962 defined "reusable beverage container" in PRC section 14525.1, expanded CalRecycle's authority to adopt regulations authorizing processors to satisfy cancellation of a reusable beverage container by washing pursuant to PRC 14539(d)(7)(B), authorized CalRecycle to certify new category of processor under PRC 14539(f), and authorized CalRecycle to certify existing processors to cancel reusable beverage containers.

These proposed regulations update the cancellation definition in 14 CCR section 2000(a)(4) to include washing by a bottle washer processor. These regulations update the certification procedure in 14 CCR section 2010(a) to allow a new type of certification as a bottle washer processor, or as a normal processor to be authorized to wash bottles. The regulations amend 14 CCR section 2045 to allow submittal of a certification application to apply to be certified as a bottle washer processor.

These proposed regulations permit CalRecycle to authorize processors to satisfy cancellation of a reusable beverage container by washing by a bottle washer processor through amendments to 14 CCR section 2000(a)(4) and the addition of 14 CCR section 2000(a)(3.7). These proposed regulations allow CalRecycle to certify additional models of processors as necessary according to 14 CCR section 2010(a). These proposed regulations allow a bottle washer processor to issue an authorization to cancel to a processor by transferring reusable beverage containers to the processor, and allow a processor to issue an authorization to cancel to a bottle washer processor by transferring reusable beverage containers to the bottle washer processor, through amendments to 14 CCR section 2110. These proposed regulations allow a bottle washer processor to reject a shipment of beverage containers that contains beverage containers not capable of being washed and refilled, through amendment of 14 CCR section 2400(b). These proposed regulations amend the cancellation definition to include washing by a bottle washer processor. These proposed regulations add a new cancellation verification procedure for a reusable beverage container in 14 CCR section 2421.

## **ANTICIPATED BENEFITS**

The goal of AB 962 is to develop a new cancellation method by washing glass beverage containers by a bottle washer processor and add a new certification procedure as a bottle washer processor.

The proposed amendments in these regulations achieves the objectives of the authorizing statute to: provide for existing processors to cancel a reusable beverage container by washing, certify additional models of processors, and cancel a reusable beverage container by washing. The proposed amendments will provide the following anticipated benefits that are aligned with these objectives:

- Allows a new method of cancellation by washing by a bottle washer processor.
- Permits a bottle washer processor to issue authorization to cancel to a normal processor by transferring reusable beverage containers to a bottle washer processor.
- Defines a bottle washer processor.
- Increases cancellation verification procedure for a reusable beverage container.
- Decreases litter and landfill disposal of beverage containers.

## **CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE 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**

Pursuant to Government Code sections 11346.1(b) and 11346.5(a)(4), CalRecycle has evaluated this regulatory proposal and has determined that there are no specific agency statutory requirements relevant to this rulemaking.

## **LOCAL MANDATE DETERMINATION**

Pursuant to Government Code section 11346.5(a)(5), CalRecycle evaluated this regulatory proposal and determined that the proposed regulations do not impose a mandate on local agencies or school districts.

## **FISCAL IMPACT ESTIMATE**

It is anticipated that fewer than 5 companies will apply for bottle washer processor certification or to be a processor authorized to cancel reusable beverage container by washing; it is anticipated work will be absorbed with existing staffing and resources; there is no additional cost to the state from these regulations.

### **Cost to Any Local Agency or School District Requiring Reimbursement Pursuant to Government Code sections 17500 et seq.:**

CalRecycle determined that there is no cost brought by the proposed regulations to any local agency or school district requiring reimbursement pursuant to Government Code sections 17500 et seq.

### **Costs or Savings to Any State Agency:**

CalRecycle determined that there are no costs or savings brought by the proposed regulations to any state agency.

### **Non-Discretionary Costs or Savings Imposed Upon Local Agencies:**

CalRecycle determined that there are no non-discretionary costs or savings imposed by the proposed regulations upon local agencies.

### **Costs or Savings in Federal Funding to the State:**

CalRecycle determined that there are no costs or savings brought by the proposed regulations in federal funding to the state.

