

NOTICE OF PROPOSED ACTION

**AB 1311 Alternative Schedule Permanent Regulations
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
TITLE 14. NATURAL RESOURCES
DIVISION 2. DEPARTMENT OF CONSERVATION
CHAPTER 5. DIVISION OF RECYCLING**

NOTICE IS HEREBY GIVEN that the Department of Resources Recycling and Recovery (CalRecycle) proposes to amend the California Code of Regulations, Title 14, Division 2, Chapter 5, Subchapter 2, commencing with Section 2030. CalRecycle also proposes to amend Subchapter 6, commencing with Section 2500, and to add Section 2503. The proposed regulations are intended to clarify the eligibility process for which certified recycling centers can apply to operate on an alternative schedule. After considering all comments, objections, and recommendations regarding the proposed action, CalRecycle may adopt the proposals substantially as described in the below Informative Digest or may modify such proposals if such modifications are sufficiently related to the original text.

PUBLIC HEARING

CalRecycle will hold a hybrid public hearing starting at 10:00 AM (PDT) on May 29, 2024 and concluding upon submission of any public hearing comments. The public hearing will be accessible in person in the Byron Sher Auditorium located on the 2nd floor of the CalRecycle headquarters at 1001 I Street, Sacramento, California. The Byron Sher Auditorium is wheelchair accessible. The public hearing will also be accessible virtually via Zoom for direct participation and via Webcast for observation only. Instructions for how to access the Zoom public hearing (registration required) or Webcast (no registration required), can be found on CalRecycle's website at <https://calrecycle.ca.gov/Laws/Rulemaking/>.

Please note that Webcast participants will not be able to provide comments during the public hearing. To participate remotely and provide comments, it is recommended to join via Zoom. No registration is necessary to view the Webcast.

At the public hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. CalRecycle requests, but does not require, that any person who makes oral comments also submit a written copy of their testimony at the hearing. All comments at the public hearing will be collected and recorded.

Simultaneous Spanish interpretation will be available in-person at the public hearing and remotely via Zoom or Webcast. For in-person interpretation services, headsets will be available and can be provided by CalRecycle staff prior to or during the hearing. If

interpretation services are needed in a language other than Spanish, please notify CalRecycle at regulations@calrecycle.ca.gov by May 20, 2024, and CalRecycle staff will do their best to accommodate this request.

WRITTEN COMMENT PERIOD

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to CalRecycle. Written comments, which offer a recommendation and/or objection, or support the proposed regulations, should indicate the section to which the comment or comments are directed. CalRecycle will only consider written comments sent to CalRecycle and received during the written comment period, which begins on April 12, 2024, and ends on May 29, 2024. Written comments received by CalRecycle after the close of the public comment period are considered untimely. CalRecycle may, but is not required to, respond to untimely comments, including those raising significant environmental issues. Comments submitted in writing must be addressed to one of the following:

Postal mail:

Csilla Richmond
AB 1311 Alternative Schedule Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95814

Electronic submittal: [AB 1311 Alternative Schedule Regulations \(45-Day Public Comment Period\)](#)

AUTHORITY AND REFERENCES

Public Resources Code Sections 14530.5, 14536, and 14539 provide authority for this regulation. The purpose of the proposed actions is to implement, interpret, and make specific law(s) related to the implementation and administration of the Beverage Container Recycling Program related to the operational hours of certified recycling centers. The following is a list of references cited in this proposed regulation: Public Resources Code Sections 14501, 14511.7, 14513.4, 14514.7, 14515.6, 14525.5.1, 14526.6, 14538, 14539, 14540, 14541, 14552, 14571, 14571.3, 14571.8, 14572, 14572.5, and 14585.

INFORMATIVE DIGEST

Summary of Existing Laws and Effect of the Proposed Action

The California Beverage Container Recycling and Litter Reduction Act (Act) (Chapter 1290, Statutes of 1986) was established to promote beverage container recycling and reduce litter by utilizing the California Refund Value (CRV) deposit and return system.

Consumers pay the CRV when purchasing beverages in containers subject to the program. The CRV deposit is returned to the consumer when they redeem the empty beverage container at a certified recycling center.

The Act requires CalRecycle to designate convenience zones located within a one-mile radius from a supermarket that has gross annual sales of \$2 million or more and is considered a “full-line” store selling dry groceries, canned goods, or non-food items and some perishable items.

The Act requires that each convenience zone be served by at least one certified recycling center in order to provide consumers convenient opportunities to redeem CRV beverage containers near places where beverages are purchased. If there is no recycling center within a convenience zone, the zone is considered unserved. Beverage dealers (retailers that sell beverages in beverage containers) in unserved zones must either redeem empty CRV containers in-store or pay a daily \$100 fee. The Act and related regulations require that certified recycling centers be operational for a period of not less than 30 hours per week if not located in a rural area. This requirement does not take into consideration unique business needs, flexibility for emergencies, or consumer desires.

Recycling center operators have made requests to CalRecycle to be allowed to close temporarily due to wildfires, the global coronavirus (COVID-19) pandemic, or even to reduce their business hours just to meet community needs. Except in the Governor’s Executive Order issued during the beginning of the COVID-19 pandemic, CalRecycle has been unable to allow such flexibility. This puts an unreasonable burden on small businesses or family-owned businesses, which most recycling center operators fall into.

Assem. Bill No. 1311 (Reg. Sess. 2021-2022) (AB 1311) provided language to allow this much needed flexibility in specific situations, while still providing consumers convenient opportunities for redemption.

These regulations will amend section 2030 of title 14 of the California Code of Regulations (CCR) to remove the prohibition on a recycling located in a convenience zone from operating less than 30 hours per week, establish and list criteria for CalRecycle approval for a recycling center to operate less than 30 hours per week.

These regulations will amend section 2045 of title 14 of the CCR to put in place requirements for a recycling center apply for an alternative schedule, to allow a recycling center application to be approved without an alternative schedule, and to make other non-substantial or ordering conforming changes.

These regulations will amend section 2500 of title 14 of the CCR to delete a 15 hour requirement for a recycling center to operate other than Monday through Friday 9AM to 5PM, deletes a hearing requirement that was superseded by Sen. Bill No. 332 (Reg. Sess. 1999-2000), and makes other non-substantial or conforming changes

These regulations will add section 2503 of title 14 of the CCR to define “family-owned business”, “natural disaster”, “small business”, “state of emergency”, establish the two

types of alternative schedules, add forms to request an alternative schedule, establish timeframes for CalRecycle review of an alternative schedule request, establish criteria for qualifying to make an alternative schedule request, clarify what happens in the event of an incomplete request for an alternative schedule, add regulatory mechanisms for lowering or raising the amount of hours in an alternative schedule, establish signage requirements for the approved alternative schedule, establish criteria for the denial of a request for an alternative schedule, and establish a method for when CalRecycle may issue a general notice in certain circumstances for a group of recycling centers to be on an alternative schedule.

These regulations will amend section 2516 of title 14 of the CCR to clarify that a recycling center operating under an approved alternative schedule is not eligible for handling fees.

Existing regulations generally use the phrase “of these Regulations” after citing to a section of the regulations.

These regulations will generally make conforming changes to remove “these regulations” in any section being amended in this rulemaking action.

Sen. Bill No. 353 (Reg. Sess. 2023-2024) (SB 353) provided that the department, instead of the Division of Recycling within the department, succeeds to and is vested with the specified authority, duties, powers, purposes, responsibilities, and jurisdiction that once belonged to the Department of Conservation regarding the Act.

These regulations will change “Division” to “department” in the above specified regulation sections to more accurately reflect which entity is actually vested with the authority to enforce the Act as most recently amended by SB 353.

Policy Statement Overview/Anticipated Benefits of Proposal

The goal of AB 1311 is to help certified recycling centers by providing more flexibility and expanding eligibility for recycling centers to operate on an alternative schedule other than the schedule established in PRC 14571(a)-(b).

The proposed regulations and amendments to existing regulations provide the following benefits that are aligned with the goals of AB 1311:

- Allow flexibility for recycling centers to operate on alternative schedules.
- Reduce recycling center closures by allowing existing certified recycling centers to stay in operation rather than closing when working less than 30 hours a week.
- Benefits to the environment as operational recycling centers help reduce litter by collecting and sorting plastics and glass containers.

- Benefits to the health and safety of workers by allowing recycling centers to close during natural disasters and states of emergency reduces the risk of employees being exposed to unhealthy or dangerous situations.
- Reduce labor needs and cost for recycling centers in situations where operators are unable to find adequate staffing to operate 30 hours a week.

Consistency With State Regulations

Pursuant to Government Code Section 11346.5(a)(3)(D), CalRecycle conducted an evaluation of existing state regulations. CalRecycle determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations and that CalRecycle is the only agency that can implement this proposed regulation.

INCORPORATION BY REFERENCE

No documents or forms are incorporated by reference in the proposed regulation.

EXISTING COMPARABLE FEDERAL REGULATION OR STATUTE

CalRecycle has determined that the proposed regulations do not significantly differ from federal law because there are no existing comparable federal statutes or regulations in this subject area.

OTHER STATUTORY REQUIREMENTS (GOVERNMENT CODE SECTION 11346.5(a)(4))

CalRecycle has determined that no other matters, as prescribed by statute, need to be addressed.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

CalRecycle has determined that the proposed regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

Local Agencies or School Districts Subject to Reimbursement

CalRecycle has determined that the proposed regulations do not result in costs to any local agency or school district that must be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 of Division 4 of the Government Code Section 17500 et seq.

Cost or Savings to Any State Agency

CalRecycle has determined that adoption of these regulations does not have a cost to state agencies.

Non–Discretionary Cost or Savings Imposed Upon Local Agencies

CalRecycle has determined that there are not non-discretionary costs or savings imposed upon any local agencies.

Cost or Savings in Federal Funding to the State

CalRecycle has determined that adoption of these regulations will not have an impact on costs or savings in federal funding to the State.

HOUSING COSTS

CalRecycle has determined that adoption of these regulations will not have a significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

CalRecycle has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. CalRecycle relied on the Division of Recycling Integrated Information System and conversations with subject matter experts in the Division to support this determination. This proposal is not intended to create, expand, or eliminate businesses within the State of California. The scope of the proposed regulations is limited to developing and implementing a process pursuant to which certified recycling centers can voluntarily apply to CalRecycle for authorization to operate on an alternative schedule.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs within the State of California

CalRecycle has determined that the proposed action will not create or eliminate jobs within California.

Creation of New Businesses or Elimination of Existing Businesses within California

CalRecycle has determined that the proposed action will not create new businesses or eliminate existing businesses within California.

Expansion of Businesses Doing Business within the State

CalRecycle has determined that the proposed action will not create an expansion of business doing business within California.

Benefits to the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

CalRecycle has determined that the proposed action will provide benefits to the health and welfare of California residents, worker safety, and the state's environment.

These regulations will provide potential benefits to both the health and welfare of California residents and the state's environment by allowing recycling centers the flexibility to stay open under an alternative schedule or temporarily close without the requirement to decertify and reapply for certification, and thus ensuring that more recycling centers can serve residents and continue to divert beverage containers from landfills in a manner that addresses concerns for a family-owned or small business recycling center.

The proposed regulations will benefit worker safety by allowing recycling centers to close during a natural disaster or state of emergency, ensuring that workers can stay home and protect their own safety in such situations.

COST IMPACTS TO REPRESENTATIVE PRIVATE PERSON OR BUSINESS

Recycling centers will be directly impacted by the regulations and will incur costs associated with filling out the forms and providing appropriate documentation. These costs are estimated to be a combined total of \$4245.30 over a span of 5 years split among all the certified recycling centers, which would result in a cost of \$8.01 annually per recycling center for a span of 5 years.

BUSINESS REPORT

The proposed regulation does not require a report, nor does a reporting requirement apply to businesses.

DETERMINATION OF EFFECT ON SMALL BUSINESS

CalRecycle has determined that the proposed regulations will affect small businesses.

AB 1311 requires that CalRecycle allow a subset of recycling centers, those that are family-owned or are a small business, to be allowed the option to implement an alternative schedule. CalRecycle estimates that 70% of recycling centers in California are considered small business, as most employ fewer than 100 people; however, the legislation requires CalRecycle to make a determination that such a schedule does not significantly decrease the ability of consumers to conveniently return beverage containers for the refund. As a result, CalRecycle is further defining small businesses for the purpose of alternative schedules to cover more than 70% of the recycling center operators, thereby allowing them to meet the small business definition of this section.

Recycling centers will be directly impacted by the regulations and will incur costs associated with filling out the forms and providing appropriate documentation. These costs are estimated to be a combined total of \$4245.30 over a span of 5 years split among all the certified recycling centers, which would result in a cost of \$8.01 annually per recycling center for a span of 5 years.

One of the reasons that the costs are relatively small is that this process is only for recycling centers that want to operate for fewer than 30 hours a week; since recycling centers make more money based on the volume of material collected in direct correlation to how many hours a recycling center is open to the public, it is likely only a small portion of recycling centers will apply for an alternative schedule.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), CalRecycle must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CalRecycle invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the scheduled public hearing.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Csilla Richmond
AB 1311 Alternative Schedule Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95814
Phone: (916) 327-0089
Email: regulations@calrecycle.ca.gov

The backup contact person is:

Craig Castleton
AB 1311 Alternative Schedule Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95814
Phone: (916) 327-0089
Email: regulations@calrecycle.ca.gov

AVAILABILITY STATEMENTS

Availability of Initial Statement of Reasons, Text of Proposed Regulations, Information Upon Which this Proposal is Based, and Rulemaking File

CalRecycle will have the entire rulemaking file, the express terms of the proposed regulations, and all information that provides the basis for the proposed action, available

for public inspection and copying during normal business hours at the address provided above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the text of the proposed regulations, the Initial Statement of Reasons, the documents relied upon for the proposed action, and the economic and fiscal impact statement. Copies may be obtained by contacting the contact persons at the address, email, or phone number listed above.

Availability of Modified Text

CalRecycle may adopt the proposed regulations substantially as described in this Notice. If CalRecycle makes substantial changes to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least fifteen (15) days before CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact persons named above. CalRecycle will transmit any modified text to all persons who testify at the scheduled public hearing, all persons who submit a written comment at the scheduled public hearing, all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. CalRecycle will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

Availability of the Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by request from the contact persons identified in this Notice or accessed through CalRecycle's website at www.calrecycle.ca.gov/Laws/Rulemaking.

INTERNET ACCESS

For more timely access to the rulemaking file, and in the interest of waste prevention, interested parties are encouraged to access CalRecycle's Internet webpage for the rulemaking at www.calrecycle.ca.gov/Laws/Rulemaking. All rulemaking files published through CalRecycle's internet website will be available on that page.