

INITIAL STATEMENT OF REASONS

October 2003

Title 14: Natural Resources
Division 7: California Integrated Waste Management Board
Chapter 4: Resource Conservation Programs
Article 1: Recycling Market Development Zone Designation Process

GENERAL COMMENTS APPLICABLE TO STATEMENT OF REASONS

The Integrated Waste Management Act (Act) [AB 939 (Sher), Stats. 1989, c. 1095], Public Resources Code (PRC) Section 40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. The Recycling Market Development Zone program created by SB1322 (Bergeson), Stats. 1989, c. 1096, made legislative declarations regarding the high priority of implementing state programs to: change manufacturing and consumption habits; increase the procurement of recycled materials by the state; improve markets for recyclable materials; conduct research and development to improve the manufacturing processes for recycled materials; and inform and educate the public about the integrated waste management hierarchy. Defines terms that are used throughout the Integrated Waste Management Act.

PRC Sections 42010 through 42023 govern Recycling Market Development Zones. Section 17900 et seq., of this Article establishes the Recycling Market Development Zone Designation Process.

The proposed regulations will streamline and further clarify the Recycling Market Development Zone designation process.

For consistency, the word ‘calendar’ has been added when specifying number of days in a timeline throughout the proposed regulations.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATION

Section 17901. Definitions.

Current regulations allow for five types of redesignation categories. They are: (1) renewal of designation; (2) change in existing policy, plan or program; (3) zone expansion; (4) reduction or other change in geographical area of a zone; or (5) other (specify). The proposed changes in this section clarify the meaning of the words “Redesignation”, “Expansion”, “Reduction” and “Change in boundaries of a Zone”.

Subsection (j)

This subsection change redefines the word “Redesignation” to include expansion of an existing Zone’s boundaries, reduction of a Zone’s boundaries, renewal of a Zone designation, and change in boundaries of a Zone.

It is necessary to make the changes in order to eliminate categories that are never used and to establish a new redesignation category to assist Zones when they apply for redesignation. The changes in the definition will also streamline the redesignation process.

Although existing regulations allowed for changes in a Zone’s boundaries, such as expansions, reductions, and other change in geographical area of a zone, the proposed regulations would make this more explicit. However, situations where local governments annexed property to existing Zone boundaries caused Zones to needlessly have to apply for Zone expansions. This change corrects this category to recognize local government annexations.

In the ten-year history of the Recycling Market Development Zone Program, redesignations have entailed renewal of designation or Zone expansion. No redesignation applications specifying categories (2), (4) and (5) have been submitted for approval. However, it is anticipated that there will be applications for redesignation that will specify the Expansion, Reduction, Zone renewal and Change in boundaries of a Zone as defined in Subsections (j), (l), (m), and (n) and Section 17914.

Subsection (l)

This new subsection defines the term “Expansion” to mean the addition of a jurisdiction or jurisdictions to existing Recycling Market Development Zone boundaries.

The purpose of this section is to differentiate and clarify the types of Recycling Market Development Zone redesignations. It is necessary to define this category since the requirements for an “Expansion” application are different than the other categories. By defining the term Expansion, the applicant will be more likely to submit the correct information and not have the approval process delayed.

Subsection (m)

This new subsection defines the term “Reduction” to mean the deletion of a jurisdiction or jurisdictions from existing Recycling Market Development Zone boundaries.

The purpose of this section is to differentiate and clarify the types of Recycling Market Development Zone redesignations. It is necessary to define this category since the requirements for a “Reduction” application are different than the other categories. By defining the term “Reduction”, the applicant will be more likely to submit the correct information and not have the approval process delayed.

Subsection (n)

This new subsection defines the term “Change in boundaries of a Zone” to mean the addition or reduction of land that does not involve the addition or deletion of a jurisdiction or jurisdictions to existing Recycling Market Development Zone boundaries.

The purpose of this section is to differentiate and clarify the types of Recycling Market Development Zone redesignations. It is necessary to define this category since the requirements for a “Change in boundaries of a Zone” application are different than the other categories. By defining the term “Change in boundaries of a Zone”, the applicant will be more likely to submit the correct information and not have the approval process delayed.

Section 17902. How does a Recycling Market Development Zone designation cycle start?

Subsection (a)

This subsection change provides the Board with the latitude to determine if a need exists for new Zones and to initiate a new cycle of designation(s) instead of having to address the issue on a yearly basis.

In 1991, Board directed staff to conduct Zone designation cycles. The Board then determined that forty Zones would be the maximum number of Zones to be designated. Following four designation cycles, the Board had approved forty Zones. The last of the designations were approved on January 24, 1996. Since then, the Board has not acted as to whether any new Zones need to be designated.

As the ten-year designation terms are coming to an end, it has come to the attention of the Board that there are other jurisdictions that are interested in seeking Zone designation status. Also, it is anticipated that some Zones will not seek renewal and others will join with existing Zones for a more regional approach. If either of these occurs, the number of existing Zones will be less than forty.

The changes in this subsection are necessary to remove the unnecessary task of determining on a yearly basis what the number of Zones should be. These changes will provide the Board the flexibility to address the number of additional Zones to designate if and when the Board deems there is a need.

Subsection (b)

This subsection change removes a specific date and replaces it with a specific timeline that needs to be met based on the action taken in Subsection (a) above.

This change provides the Board up to an additional 30 days to notify local governments and interested parties of the next designation cycle. The existing time frame of 90 days is insufficient for the Board to notify and contact affected parties.

Section 17905. What do I need to include in my Zone application?

Subsection (g)

This subsection change adds language that provides another option to Zone designation applicants how the California Environmental Quality Act compliance will be met.

This allows those local governments that have existing CEQA documents that address Zone's environmental issue (such as an existing EIR or Negative Declaration that covers the project area) to use these documents to demonstrate compliance.

Subsection (h)

This is a new subsection. This subsection would require Zones to provide a statement that shows that they are committed to environmental justice and will administer the Zone in a manner that protects public health and safety.

This subsection is necessary based on the requirements set forth in PRC Section 71110 (a), which requires that all California Environmental Protection Agency programs must be conducted in a manner that ensures the fair treatment of people of all races, cultures and income levels, including low income and minority populations.

The RMDZ program is a California Environmental Protection Agency program within the Board. The Board is required to meet the requirements in Section 71110 (a) and since the RMDZ program is administered by local jurisdictions and each Zone designation is approved by the Board, it is necessary for the Board to require that local governments also meet the same requirements in Section 71110(a)

Section 17910. What happens if the Board designates my area as a Zone?

Subsection (b)

This subsection change provides for a specific timeline of 90 days for local governments to submit specified documents prior to receiving final designation by the Board.

This change is needed to provide Board staff a reasonable amount of time to process and analyze key components of the Zone designation application.

Subsection (b)(1)

This subsection change requires the applicant to submit specific documents prior to final designation rather than merely indicate that the documents are available.

This change ensures that the actual documents are submitted for review to staff to demonstrate that multi-jurisdictional agreements are in place.

Section 17911. I have completed all conditions in my Notification. When can I get final designation?

Subsection (a)

This subsection change reduces the specific timeline for actions that must be taken and clarifies that the time line is calendar days.

This change reduces from one year to four months the time for local governments to submit requests for final designation. The time reduction is needed to expedite the designation process and is still a reasonable time frame for local governments to meet.

Subsection (b)

This proposed change would reduce the specific timeline for actions that must be taken. This will help expedite the designation process.

This change reduces from one year to four months the time for local governments to satisfy the notification conditions or forfeit the application for designation. This change is needed to expedite the designation process and is still a reasonable time frame for local governments to meet.

Section 17913. Do I have to submit regular reports?

This section change provides for a specific date that an annual report must be submitted instead of the anniversary date of each Zone's designation. This change will allow the reports from all zones to be submitted at one time annually, making it easier for Board staff to review reports and compile statewide information. This section change requests that the annual reports include efforts of marketing activities undertaken and the outcomes of these efforts.

By setting a specific date to receive annual reports from Zones, Board staff will be able to compile the information in a timely manner and submit Zone Program specific information to Board's Annual Report to the Legislature. - Otherwise, the information will be incomplete.

The Board provides marketing funds to the Zones on a reimbursement basis. The Board would like to have the results of these marketing activities reflected in the annual reports. This information will be compiled and submitted to the Legislature as part of the RMDZ program's activities and effectiveness.

Section 17913.5 Can a Zone terminate its Zone designation?

This Section is a new section. This section discusses how a zone may terminate its Zone designation status and provides the process.

Existing regulations do not address this issue. The only option available in current regulations is for the Zone to not seek renewal at the end of its ten-year designation cycle. This section will

allow a zone to terminate designation at any given time. This section fills a void in the process if and when a Zone requests ending its Zone designation status.

Section 17914. Can a Zone be redesignated?

This proposed change would define the types of redesignations based on the definitions set forth in CCR Section 17902 and also adds language regarding submittal of ‘renewal’ type redesignation applications.

Redesignation applications for renewal of a Zone must be submitted to the Board 60 days prior to the expiration of the Zone’s ten-year designation in order to provide continuity and for the Board to provide Zone services pursuant to Section 40502, Public Resources Code.

Subsection (b)(2)

The previous wording in this subsection is repealed since this category has never been used in the ten-year history of the Zone Program and is more than likely that it never will. This subsection is replaced with a new Subsection (b)(2) “Zone expansion, or”.

Existing policy and plan changes are initiated and approved at the local level and program changes are approved at the Board level. There is no need for this category for redesignation.

Subsection (b)(3)

The previous wording in this subsection was renumbered to subsection (b)(2). This subsection is renumbered Subsection (b)(3). This subsection deletes language regarding ‘other geographical area of a Zone, or’ and leaves reduction as a stand-alone category.

This subsection is replaced with wording from previous subsection (b)(4). The deletion of the text relating to change in geographic area is needed because this type of change has been restructured and new categories were established.

This change is needed since additional definitions were proposed in Section 17901 as well as a new category in Section 17914 (b)(4). ‘Change in boundaries of a Zone’ was created to address and cover ‘other geographical area of a Zone’. By separating these categories and making ‘Reduction’ a stand a lone category, the burden to provide unnecessary documents is removed from the Zones.

Subsection (b)(4)

This subsection deletes the word ‘other’ and replaces it with ‘change in boundaries’. This subsection establishes a new category of redesignation based on new definitions in Section 17901 Subsection (n).

Subsection (b) (5)

This subsection change is deleted because no category for “other” is needed.

This change is necessary since the category ‘Other’ is not defined and is subject to wide interpretation and may lead to potential litigation. In the ten-year history of Zone designations, no application for redesignation has been submitted citing ‘Other’ as the category for requesting redesignation. It is more than likely that it never will be requested in the future.

Subsection (c)

This subsection change renumbers certain categories and deletes others based on changes in Subsection (b) above.

This change is needed to reflect the numeric changes in Subsection (b) above.

Subsection (c)(3)

This subsection deletes category (5) and replaces it with category (4) based on changes in Subsection (b) above.

This change is needed to reflect changes in subsection (b) above.

Subsection (d)

This subsection deletes categories (3) and (5) based on changes in subsection (b) above and adds Subsection (d)(1) regarding multi-jurisdictional agreements and Subsection (d)(2) regarding environmental justice requirements.

In addition to the required documents specified in this subsection, Subsection (d)(1) requests that Zones with multi-jurisdictional agreements, submit these agreements to make sure that any resolutions or decisions taken on behalf of the multi-jurisdictional agreements pertaining to the Zone are authorized by these agreements and copy(s) are submitted to the Board.

Subsection (d)(2) is a new subsection. This subsection requires Zones to provide a statement that shows that they are committed to environmental justice and will administer the Zone in a manner that protects public health and safety and to also be aware that any Zone related activities do not unfairly affect low-income and minority populations.

This subsection is necessary based on the requirements set forth in PRC Section 71110 (a), which requires that all California Environmental Protection Agency programs must be conducted in a manner that ensures the fair treatment of people of all races, cultures and income levels, including low income and minority populations.

The RMDZ program is a California Environmental Protection Agency program within the Board. The Board is required to meet the requirements in Section 71110 (a) and since the RMDZ program is administered by local jurisdictions and each Zone designation is approved by the Board, it is necessary for the Board to require that local governments also meet the same requirements in Section 71110(a).

Subsection (e)

This subsection changes re-formats the requested information numerically and asks the applicants for ‘Renewal’ to provide an updated Market Development Plan, a statement on how the Zone will address any known Environmental Justice issues and copies of any multi-jurisdictional agreements pertaining to Zone administration.

These changes will set the requirements numerically from 1-4. The request for a revised Market Development Plan (MDP) is necessary in order to provide Zones an opportunity to revisit their original MDP and to reassess if the original goals in the MDP were achieved or if there is a need to modify or have new goals for the next ten-year of designation based on changes in recyclable feedstock availability, or new marketing strategies for the Zone.

Subsection (f)

The previous wording of this subsection has been deleted based on changes in Subsection (b) above.

The language from previous subsection (g) has been renumbered to subsection (f).

Subsection (f)(5)

This subsection language was re-written to require that letters of support and commitment be presented from every entity mentioned in the application as having a role in implementing the Zone’s MDP.

This change is necessary since it will expedite the application process for local governments and reduce the burden of having a Zone gather duplicate letters of support and commitment, as required in the original zone designation, from entities that had originally submitted such letters for the initial designation of the Zone. This change would limit the entities required to submit these letters.

Subsection (g)

The language from previous subsection (h) has been renumbered to subsection (g).

This subsection changes the word “boundary” to “boundaries” for consistency throughout the regulations.

Subsection (h)

This is a new subsection. This subsection sets the process for redesignation applications that will result in “Changes in boundaries of a Zone”.

Since ‘Change in boundaries of a Zone’ is a new redesignation category, the proposed regulation in Subsection (h) specifies the process for a Zone to change its boundaries.

These requirements are necessary to make sure that changes in boundaries are accomplished through resolutions or ordinances and to get an accurate description of the new Zone boundaries and that CEQA compliance is met.

Subsection (h)(4): This subsection asks Zones to provide a statement that shows that they are committed to environmental justice and will administer the Zone in a manner that protects public health and safety and to ensure that any Zone related activities do not unfairly affect low-income and minority populations.

This subsection is necessary based on the requirements set forth in PRC Section 71110 (a), which requires that all California Environmental Protection Agency programs must be conducted in a manner that ensures the fair treatment of people of all races, cultures and income levels, including low income and minority populations.

The RMDZ program is a California Environmental Protection Agency program within the Board. The Board is required to meet the requirements in Section 71110 (a) and since the RMDZ program is administered by local jurisdictions and each Zone designation is approved by the Board, it is necessary for the Board to require that local governments also meet the same requirements in Section 71110(a).

Section 17914.5. What is the Board’s process for reviewing Zone redesignation applications and designating Zones?

This section sets the Board’s internal process for review when the Board receives approval of an application for Zone designation or redesignation.

Subsection (c)(1)

This subsection changes the timeline from one year to four months for Zone designation or redesignation applicants to satisfy specific conditions for final designation or redesignation that were set forth by the Board in a Notification letter.

These changes are consistent and mirror with changes proposed in Section 17911.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board has considered alternatives, including the “no action” alternative. Staff has looked at the possibility of implementing these changes via administrative decisions or to request that the Board consider and adopt policy changes. However, these changes can only be done through regulations. CIWMB staff has determined that changes in the regulations will allow for a streamlined Recycling Market Development Zone Designation process, providing a quicker approval timeline and reducing the burden on local governments requirements for Recycling Market Development Zone designations.

INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CIWMB staff has made a determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The CIWMB relied on the Public Resources Code, input from Recycling Market Development Zone Administrators and from the public.