

NOTICE OF PROPOSED ACTION

CONVENIENCE ZONE EXEMPTIONS AND HANDLING FEES

TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION CHAPTER 5. DIVISION OF RECYCLING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 6, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 6. RECYCLING CENTERS Article 2. Handling Fees

§ 2516. Eligibility Criteria

Subsection 2516(a)(2): Amend the section to delete the prohibition for a recycler to collect handling fees for containers that were collected during the period that the convenience zone exemption review was in process. This amendment is necessary to allow a certified recycling center to be eligible for handling fees beginning the first whole month that the recycler is operational in a convenience zone, regardless of zone status.

INFORMATION IS AVAILABLE UPON REQUEST. Copies of the text, the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request and at our website: www.conservation.ca.gov. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Marty Nold, at (916) 327-2761. General or substance questions regarding this file may also be directed to Marty Nold. The backup agency contact person for this rulemaking file is Cheryl Brown, who may be contacted at (916) 323-0728. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS. 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 a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. 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 August 1, 2005. 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. Submit your written comments to: Marty Nold, Convenience Zone Exemptions and Handling Fees Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@consrv.ca.gov, or faxed to (916) 327-8668.

PUBLIC HEARING. A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF MODIFIED TEXT. Following the written comment period, and the hearing, if one is held, the Department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with the changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the Department contact person identified in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Beverage Container Recycling and Litter Reduction Act (Chapter 1290, Statutes of 1986) was enacted in 1986 with a primary goal of providing consumers with convenient recycling opportunities for empty beverage containers. The Department has responsibility for the establishment and administration of the program. Convenience zones are designated by the Department to increase the geographical dispersal of locations where beverage containers can be redeemed. (§14571.1) In addition, the Department pays handling fees to recyclers as an incentive to establish operations in these zones, thereby enhancing consumer convenience to redeem empty beverage containers. (§14585) Unless excepted, a convenience zone is required to be served by a certified recycling center. (§14571)

A convenience zone with an operational recycling center is considered a "served" zone. If a zone is unserved, dealers within that zone are required to either (1) take empty beverage containers back in the store, or (2) pay \$100 per day in lieu of accepting and redeeming empty containers in-store. (§14571.6) Alternately, the Department may determine that a zone is exempt if it meets

specified statutory criteria. (§14571.8) Designation of a zone as “exempt” relieves dealers within that zone of the responsibility of accepting and redeeming empty beverage containers.

The establishment of a recycling center in a previously exempt zone will result in the revocation of the exempt status of the zone. However, because the review process of exempt zones is conducted on a quarterly basis, there may be a 60 to 90 day delay between the time a recycler becomes operational and the time the exemption is officially revoked.

Typically recyclers prefer to locate in convenience zones so that they may qualify for the increased revenue received from handling fee payments. However, eligibility requirements for handling fees specify that the recycler must be located in a convenience zone that was not exempt on the first day of the calendar month for which the handling fees are claimed. (CCR §2516(a)(2)) Therefore, recyclers are not eligible for handling fees for containers collected during any month the recycler operated in an exempt zone.

Because there may be a 60 to 90 day delay to revoke the exempt status of a formerly exempt zone, some recyclers have expressed reluctance to locate in these zones due to the inability to qualify for handling fees for the first whole month of operation. This has resulted in hardship for newly certified recyclers, and proven problematic for the Department to encourage recyclers to locate in previously exempt zones. The Department proposes to amend current regulations to allow the payment of handling fees beginning the first whole month the recycler was operational in a convenience zone, regardless of zone status. This amendment will enhance recycler enthusiasm to locate in exempt zones, and advance a primary goal of the beverage container recycling program by increasing convenient recycling opportunities for consumers.

AUTHORITY

These regulations are submitted pursuant to the Department’s authority under Public Resources Code Sections, 14530.5 (b) and 14536.

REFERENCE

Public Resources Code Sections, 14513.4, 14514.7, 14525.51, 14526.6, 14552, 14571.8, 14572, and 14585.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations will not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Costs or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language.

These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: Any cost impact that a representative private person or business may incur in reasonable compliance with the proposed action can be mitigated.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

Create or eliminate jobs within California;

Create new nor eliminate existing businesses within California;

Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will not affect small businesses. These proposed regulations serve to clarify and make specific existing requirements contained in statute. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarifies existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: www.conservation.ca.gov.