

NOTICE OF PROPOSED ACTION

AB 793 PLASTIC CONTENT REPORTING AND COMPLIANCE PERMANENT REGULATIONS

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY, DIVISION OF RECYCLING

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

NOTICE IS HEREBY GIVEN that Department of Resources Recycling and Recovery, Division of Recycling (CalRecycle), proposes to adopt amendments as described in the Informative Digest. After considering all comments, objections, and recommendations regarding the proposed action, CalRecycle may adopt the proposals substantially as described in the 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 1:00pm on March 21, 2023. The public hearing will be accessible in person in the Sierra Hearing Room located on the 2nd floor of the CalRecycle headquarters at 1001 I Street, Sacramento, California. The Sierra Hearing room is wheelchair accessible. The public hearing will also be accessible virtually via Zoom. Instructions for how to access the Zoom public hearing, including the specific Zoom link, can be found on CalRecycle's website, www.calrecycle.ca.gov/Laws/Rulemaking/.

At the public hearing, any person may present statements or arguments, orally, in writing, or in the chat of the Zoom meeting, 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 in the virtual hearing will be collected and recorded.

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 amendment, should indicate the amended 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

February 3, 2023, and ends at the conclusion of the rulemaking hearing on March 21, 2023. Additionally, CalRecycle requests that written comments reference a subsection or section of the proposed action. Written comments received by CalRecycle after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to:

Claire Derksen
AB 793 Plastic Content Reporting and Compliance Permanent Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95812.

During the comment period, written comments may also be e-mailed to:
Regulations@calrecycle.ca.gov

AUTHORITY AND REFERENCE

Authority: Public Resources Code sections 14530.5 and 14536 authorize CalRecycle to adopt these proposed regulations.

Reference: The proposed regulations implement, interpret, and make specific sections 14547 and 14549.3 of the Public Resources Code by proposing changes to the following sections 2000, 2100, 2235, and 2240 and adding new sections 2250, 2260, 2265, 2780, 2785, 2790, and 2795 to Chapter 5, Division 2, Title 14 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT

Summary of Existing Laws and Effect of the Proposed Action

The California Beverage Container Recycling and Litter Reduction Act, Public Resources Code (Pub. Res. Code) section 14500 et seq. (Act), created the California Beverage Container Recycling Program (BCRP). The Department of Resources Recycling and Recovery (Department or CalRecycle), Division of Recycling (Division) administers the Beverage Container Recycling Program which was created through the Act as a California Redemption Value (CRV) deposit and return system to reduce the beverage container component of litter and create convenient beverage container recycling opportunities in the state. CalRecycle is tasked with ensuring consumers throughout the state have convenient recycling options to which they can return their CRV beverage containers and claim their deposit. CalRecycle is also tasked with monitoring and enforcing the usage of postconsumer recycled (PCR) plastic content in the manufacturing of plastic beverage containers subject to CRV.

AB 2530 (Chapter 861, Statutes of 2016) required a manufacturer of a beverage (beverage manufacturer) sold in a plastic beverage container subject to CRV to report to CalRecycle the amount of virgin plastic and PCR plastic used by the manufacturer for plastic CRV-eligible beverages sold in the state during the previous calendar year.

CalRecycle is required to post the reported information on CalRecycle's public website annually.

Existing law, AB 793 (Chapter 115, Statutes of 2020), Pub. Res. Code section 14549.3, requires beverage manufacturers to report to CalRecycle the amount in pounds by resin type of virgin and postconsumer recycled plastic used by the manufacturer for plastic beverage containers subject to CRV for sale in the sale for the previous calendar year.

The proposed regulations adopt definitions for postconsumer recycled material and post-industrial recycled material and establish the form and manner for beverage manufacturers to submit this required reporting to CalRecycle. These regulations also add a documentation retention requirement and specifies the kinds of documents required to be kept as evidence for postconsumer recycled plastic used in plastic beverage containers subject to CRV.

Existing law, AB 793, Pub. Res. Code section 14549.3 requires a plastic material reclaimer to report to CalRecycle the amount in pounds and by resin type of empty plastic beverage containers subject to the CRV, that the plastic material reclaimer collected and sold in the previous year.

The proposed regulations adopt a definition for plastic material reclaimer, clarify that an identification number will be provided by CalRecycle to a plastic material reclaimer, and establish the form and manner for a plastic material reclaimer to submit the plastic material reclaimer report to CalRecycle.

Existing law, AB 793, Pub. Res. Code section 14549.3, requires a manufacturer of postconsumer recycled plastic to report to CalRecycle the amount in pounds of food-grade flake, pellet, sheet, fines, or other forms that were sold in the previous calendar year; their capacity to produce food-grade material, specifying the amount in pounds of material that meets beverage manufacturer specifications for bottle-grade material; and to include the amount in pounds of food-grade material sold in the state for beverage processing.

The proposed regulations adopt a definition of a manufacturer of postconsumer recycled plastic, definitions for food-grade and bottle-grade, a clarification that an identification number will be provided by CalRecycle to a manufacturer of postconsumer recycled plastic, and the form and manner for a manufacturer of postconsumer recycled plastic to submit the manufacturer of postconsumer recycled plastic report to CalRecycle.

Existing law, AB 793, Pub. Res. Code section 14547, provides beverage manufacturers, through an association, to petition the Director of CalRecycle to adjust the minimum postconsumer recycled plastic content standards annually beginning on January 1, 2025.

The proposed regulations establish that on or after January 1, 2025, an association that

petitions the Director to adjust the minimum postconsumer recycled plastic content standard must represent at least 35% of all registered beverage manufacturers that reported plastic beverage containers for the previous calendar year. These regulations also establish the form and manner for the association to submit the petition to CalRecycle, a deadline of December 1 to file a petition, and a date of May 1, in the subsequent year, by when the Director will either grant or deny the petition.

Existing law, AB 793, Pub. Res. Code section 14547, establishes minimum postconsumer recycled plastic content standards for plastic beverage containers subject to CRV and the administrative penalties for not meeting those minimum postconsumer recycled plastic content standards. This section permits beverage manufacturers to request a reduction in administrative penalties and requires beverage manufacturers to obtain approval of a corrective action plan before any request is granted by the Director of CalRecycle.

The proposed regulations establish the form and manner for a beverage manufacturer to submit a request for reduction in administrative penalties and corrective action plans. The proposed regulations establish when a request for reduction in administrative penalties must be submitted to CalRecycle. The proposed regulations establish and clarify the criteria that the Director of CalRecycle will use when deciding to grant or deny a reduction in administrative remedies.

Existing law, Pub. Res. Code section 14591.1(a)(2) and section 2100 of title 14 of the California Code of Regulations, establish a notice of violation process for the assessment of civil penalties of less than \$1000 for specified violations of the Act and the adopted regulations for the Act.

The proposed regulations amend section 2100 to include Pub. Res. Code section 14549.3 to make clear that failure to file a required report correctly and accurately by a beverage manufacturer, a plastic material reclaimer, or a manufacturer of postconsumer recycled plastic may be subject to discipline through the Notice of Violation process.

Statement on Substantial Difference from Existing, Comparable Federal Regulation or Statute

CalRecycle evaluated this regulatory proposal and determined that it does not have any substantial differences from existing, comparable federal regulations or statutes.

Policy Statement Overview/Anticipated Benefits of Proposal

The goal of AB 793 is to help develop domestic markets for recycled plastic, reduce the amount of virgin plastic used, and provide a closed-loop solution for plastic beverage containers by establishing minimum PCR plastic content standards for plastic beverage containers subject to CRV.

The proposed regulations and amendments to existing regulations provide the following

benefits that are aligned with the goals of AB 793:

- Defines reporting entities (plastic material reclaimer and manufacturer of postconsumer recycled plastic) and the goods whose production volume they are required to report (bottle-grade plastic and food-grade plastic) as specified in Pub. Res. Code sections 14549.3(b) and (c).
- Clarifies the procedures and information required for an association of a group of beverage manufacturers to petition CalRecycle to reduce the PCR plastic minimum content standard as specified in Pub. Res. Code section 14547(a)(4)(A).
- Provides the form and manner for completing mandated reporting by beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic specified in Pub. Res. Code section 14549.3.
- Includes recordkeeping requirements of minimum recycled plastic content documentation for beverage manufacturers to facilitate reporting the content of virgin and PCR plastic specified in Pub. Res. Code section 14549.3(a).
- Establishes the procedures and information required for a request to reduce administrative penalties and submission of corrective action plans by individual beverage manufacturers as permitted by Pub. Res. Code section 14547(e).
- Permits CalRecycle to use the Notice of Violation process in section 2100 of title 14 of the California Code of Regulations to impose discipline on beverage manufacturers, plastic material reclaimers, and manufacturers of postconsumer recycled plastic for failure to submit required reports accurately and correctly, which is a less costly form of discipline and permits for lower assessments of civil penalties when compared to the other discipline provisions of the Act.

Additionally, the proposed regulations will benefit the health and welfare of California residents along with the state's environment by providing the specificity necessary to implement a minimum PCR plastic standard for plastic beverage containers, which will increase the demand for recycled plastic, reduce plastic litter, and increase the use of recycled plastic in the manufacture of plastic beverage containers thereby reducing greenhouse gas emissions, as compared to the use of virgin plastic. There are no anticipated benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity, or an increase in transparency in business and government.

Consistency and Compatibility with Existing State Regulations

CalRecycle evaluated this regulatory proposal and determined that it is not inconsistent nor incompatible with existing state regulations. The proposed regulations will not be duplicative of other existing regulations as the BCRP is unique to the state of California, and there is no other agency outside of CalRecycle that administers payments and claims for recycling beverage containers. Additionally, there is no other program within the state of California that administers or imposes requirements for minimum postconsumer recycling content of beverage containers subject to CRV or for any other type of food or drink container sold in California.

Incorporation by Reference

This proposed regulatory action does not incorporate any documents by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

CalRecycle has evaluated this regulatory proposal and has determined that it is not inconsistent nor incompatible with existing federal regulations or statutes. The Act which created the BCRP, pursuant to Pub. Res Code section 14500 et seq., is unique to the state of California.

LOCAL MANDATE

CalRecycle made the following initial determination:

Mandate on Local Agencies and School Districts: None

FISCAL IMPACT

CalRecycle made the following initial determinations:

Costs or Savings to Any State Agency: There is no fiscal impact to any state agency.

Cost to Any Local Agency or School District for Which Government Code sections 17500 - 17630 Require Reimbursement: None

Nondiscretionary Costs/Savings to Local Agencies: None

Costs/Savings in Federal Funding to the State: None

HOUSING COSTS

Effect on Housing Costs: None

DETERMINATION ON SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Business Impact

CalRecycle determines that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. 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 the form and manner of implementing the reporting requirements, administrative penalties, and relief measures to reduce administrative penalties.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Statement of the Results of Economic Impact Assessment and Impact on Jobs/Businesses

CalRecycle does not anticipate that any jobs will be created or eliminated within California, or that any new businesses will be created, or existing businesses eliminated within California because of these regulations. CalRecycle also does not anticipate any expansion of businesses currently doing business within California because of these regulations. This proposal is not intended to create or eliminate jobs.

Benefits of Regulation

The scope of these proposed regulations is generally limited to the form and manner of implementing the reporting requirements, administrative penalties, and relief measures from administrative penalties. The proposed amendments will provide the benefit of clarifying the language introduced by AB 793 and provide the method for implementing the reporting requirements and penalties. The proposed regulations are also in alignment with and are anticipated to provide benefits relating to the goal of AB 793 to help develop domestic markets for recycled plastic, reduce the amount of virgin plastic used, and provide a closed-loop solution for plastic beverage containers by establishing minimum PCR plastic content standards for plastic beverage containers subject to CRV.

Additionally, the proposed regulations will benefit the health and welfare of California residents along with the state's environment by providing the specificity necessary to implement a minimum PCR plastic standard for plastic beverage containers, which will increase the demand for recycled plastic, reduce plastic litter, and increase the use of recycled plastic in the manufacture of plastic beverage containers thereby reducing greenhouse gas emissions, as compared to the use of virgin plastic. There are no anticipated benefits to worker safety, the prevention of discrimination, the promotion of fairness or social equity, or an increase in transparency in business and government.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

CalRecycle estimates the cost impact of this proposed regulation on a representative private person or business is generally limited to the form and manner of reporting a minimum PCR content standard for plastic beverage containers as specified in Pub. Res. Code section 14549.3, preparing and submitting corrective action plans, requests for a reduction in administrative remedies as specified in Pub. Res. Code section 14547, and preparing and submitting petitions to the Director of CalRecycle to adjust the postconsumer recycled plastic minimum content standard as specified in Pub. Res. Code section 14547.

BUSINESS REPORT

Pub. Res. Code section 14549.3 requires three entities to submit specific reports: beverage manufacturers that offer plastic beverage containers for sale in the state, manufacturers of postconsumer recycled plastic, and plastic material reclaimers. These regulations establish the form and manner of those reports. Consequently, CalRecycle determined that this regulatory proposal requires reports. This regulatory proposal does not introduce any new reports.

CalRecycle finds that the documentation required by manufacturers of postconsumer recycled plastic, plastic material reclaimers, and beverage manufacturers that offer plastic beverage containers for sale in the state is necessary for the health, safety and welfare of the people of the state. It is also necessary that the proposed regulations apply to businesses that sell plastic beverage containers, reclaim PCR material, and manufacture PCR material.

EFFECT ON SMALL BUSINESS

Approximately 695 businesses will be impacted by these proposed regulations, of which 668 are beverage manufacturers that sell beverages in plastic beverage containers and 27 are plastic material reclaimers or manufacturers of PCR plastic. Of the 668 beverage manufacturers impacted, 494 are considered small businesses defined as those paying less than \$15,000 annually in processing fees for all material types pursuant to Pub. Res. Code section 14575(d). Of the 27 plastic material reclaimers and manufacturers of PCR plastic impacted, 9 are considered small businesses defined as receiving less than \$100,000 annually in Plastic Market Development Payments pursuant to Pub. Res. Code section 14549.2. The amount of Plastic Market Development Payments is directly related to the volumetric production of a business and therefore provides insight into a business's size and capacity.

The total number of small businesses impacted is 503 or 72 percent of the total (695) businesses identified.

ALTERNATIVES INFORMATION

In accordance with Government Code section 11346.5(a)(13), CalRecycle must determine that no reasonable alternative considered 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, or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice, 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:

Claire Derksen
1001 I Street, MS-24B
Sacramento, CA 95812
E-Mail: Regulations@calrecycle.ca.gov
Telephone: (916) 327-0089

The backup contact person is:

Craig Castleton
1001 I Street, MS-24B
Sacramento, CA 95812
E-Mail: Regulations@calrecycle.ca.gov
Telephone: (916) 327-0089

AVAILABILITY STATEMENTS

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

CalRecycle has prepared an initial statement of reasons for the proposed action. Copies of the proposed regulation text, the initial statement of reasons, and all the information upon which this proposal is based is available upon request or at our website: www.calrecycle.ca.gov/Laws/Rulemaking/.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection during normal business hours at CalRecycle, 1001 "I" Street, 24th Floor, Sacramento, California 95812, by contacting the contact person identified in this notice.

Availability of Documents for Physical Inspection Only

CalRecycle will not make the following documents available from the website, but will make the following documents available for public inspection at the location explained below:

Attachment 1: The Plastic Beverage Container Virgin and Postconsumer Resin Report

covering calendar year 2021 documents will only be available for physical inspection and

Attachment 3: The *International Standard ISO 14021: Environmental labels and declarations – Self-declared environment claims (Type II environmental labelling)*

These documents are available for public inspection during normal business hours at CalRecycle, 1001 “I” Street, 24th Floor, Sacramento, California 95812, by contacting the contact person identified in this notice.

Availability of Modified Text

After considering all timely comments received CalRecycle may adopt the proposed regulations substantially as described in this notice. If CalRecycle makes modifications, 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 CalRecycle adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to CalRecycle contact person identified in this notice. CalRecycle will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

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 person 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 can be downloaded directly from the website.