California Beverage Container Recycling and Litter Reduction Act

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REVISED EDITION

This publication has been prepared by the Department of Conservation and contains statutes implementing programs administered by its Division of Recycling. This revised edition contains code sections in effect January 1, 2004. While every effort has been made to ensure accuracy, any errors or omissions do not negate the rights and duties of program participants. In addition, this edition does not correct grammatical or typographical errors that appear in the chaptered versions of the legislation amending Divisions 12.1, 12.7 and 12.9 of the Public Resources Code.

LEGEND:
Additions = underlined
Deletions = ~~strikeout~~

PUBLIC RESOURCES CODE,
DIVISION 12.1

CALIFORNIA BEVERAGE CONTAINER RECYCLING AND LITTER REDUCTION ACT

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PUBLIC RESOURCES CODE
DIVISION 12.1

CALIFORNIA BEVERAGE CONTAINER RECYCLING AND LITTER REDUCTION ACT

(Division 12.1 was added by Chapter 1290 (AB 2020), Statutes of 1986; effective September 29, 1986)
AS AMENDED THROUGH 1/1/2004
(see annotations)

CHAPTER 1. FINDINGS

14500. This division shall be known and may be cited as the California Beverage Container Recycling and Litter Reduction Act.

14501. The Legislature finds and declares as follows:

(a) Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, nonprofit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.

(b) California grocery, beer, soft drink, container manufacturing, labor, agricultural, consumer, environmental, government, citizen, recreational, taxpayer, and recycling groups have joined together in calling for an innovative program to generate large-scale redemption and recycling of beverage containers.

(c) This division establishes a beverage container recycling goal of 80 percent, and when the redemption rate for any one type of beverage container falls below 65 percent, this division provides for an increased refund value.

(d) It is the intent of the Legislature to ensure that every container type proves its own recyclability.

(e) It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby urges cities and counties, when exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience, and the overall success of litter abatement and beverage container recycling in the state.

(f) The purpose of this division is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and

other beverage container recycling programs.

(g) The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation.

(h) It is the intent of the Legislature, in enacting this division, that all empty beverage containers redeemed shall be recycled, and that the responsibilities and regulations of the department shall be determined and implemented in a manner which favors the recycling of redeemed containers, as opposed to their disposal.

(i) Nothing in this division shall be interpreted as affecting the current business practices of scrap dealers or recycling centers, except that, to the extent they function as a recycling center or processor, they shall do so in accordance with this division.

(j) The program established by this division will contribute significantly to the reduction of the beverage container component of litter in this state.

14501.5. This division does not apply to any beverage container which is sold and delivered to a railroad, sleeping car, or steamship company, or common carrier operating vessels, as defined in Section 238 of the Public Utilities Code, operating under a certificate of public convenience and necessity, or an air common carrier, for use and consumption on trains, vessels, or airplanes.

CHAPTER 2. DEFINITIONS

14502. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

14503. “Aluminum beverage container” means a beverage container which consists primarily of aluminum.

14503.5. “Average monthly volume” means the average number of empty beverage containers per month received by a certified recycling center.

14503.6. “Beneficiating processor” means any person certified by the department as a processor who also beneficiates purchased cullet so that it is furnace ready for glass container manufacturers, consistent with prevailing standards in the manufacturing industry. Cullet shall be deemed furnace ready when it has been cleansed, is free of nonglass contaminants, and has been crushed or otherwise processed in such a manner as to be acceptable without further processing by the purchasing glass container manufacturer.

14504. (a) Except as provided in subdivision (b), "beverage" means any of the following products if those products are in liquid, ready-to-drink form, and are intended for human consumption:

(1) Beer and other malt beverages.

(2) Wine and distilled spirit coolers.

(3) Carbonated water, including soda and carbonated mineral water.

(4) Noncarbonated water, including noncarbonated mineral water.

(5) Carbonated soft drinks.

(6) Noncarbonated soft drinks and "sport" drinks.

(7) Except as provided in paragraph (4) of subdivision (b), noncarbonated fruit drinks that contain any percentage of fruit juice.

(8) Coffee and tea drinks.

(9) Carbonated fruit drinks.

(10) Vegetable juice in beverage containers of 16 ounces or less.

(b) "Beverage" does not include any of the following:

(1) Any product sold in a container that is not an aluminum beverage container, a glass container, a plastic beverage container, or a bimetal container.

(2) Wine, or wine from which alcohol has been removed, in whole or in part, whether or not sparkling or carbonated.

(3) Milk, medical food, or infant formula.

(4) One hundred percent fruit juice in containers that are 46 ounces or more in volume.

(c) For purposes of this section, the following definitions shall apply:

(1) "Infant formula" means any liquid food described or sold as an alternative for human milk for the feeding of infants.

(2)(A) "Medical food" means a food or beverage that is formulated to be consumed, or administered enterally under the

supervision of a physician, and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(B) A "medical food" is a specially formulated and processed product, for the partial or exclusive feeding of a patient by means of oral intake or enteral feeding by tube, and is not a naturally occurring foodstuff used in its natural state.

(C) "Medical food" includes any product that meets the definition of "medical food" in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360ee (b)(3).

(3) "Noncarbonated soft drink" means a nonalcoholic, noncarbonated naturally or artificially flavored water containing sugar or sweetener or trace amounts of various elements from both natural and synthetic sources.

14505. “Beverage container” means the individual, separate bottle, can, jar, carton, or other receptacle, however denominated, in which a beverage is sold, and which is constructed of metal, glass, or plastic, or other material, or any combination of these materials. “Beverage container” does not include cups or other similar open or loosely sealed receptacles.

14506. “Beverage manufacturer” means any person who bottles, cans, or otherwise fills beverage containers, or imports filled beverage containers, for sale to distributors, dealers, or consumers.

14506.3. “Bimetal container” means a beverage container which consists of one or more metals and which is composed primarily of steel.

14506.5. “Commingled” means a mix of empty beverage containers, as defined in Section 14512, and all other containers of the same material type.

14506.7. “Commingled rate” means the ratio of empty beverage containers, as defined in Section 14512, to all other containers, of the same material type, as determined by the department.

14507.5. “Community Conservation Corps” means a nonprofit public benefit corporation formed or operating pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, or an agency operated by a city, or city and county, which is certified by the California Conservation Corps as meeting all of the following criteria:

(a) The corps consists of not less than 50 corpsmembers organized in the form of supervised work crews and selects young men and women for participation on the basis of the criteria specified in Section 14302.

(b) The corps’ program is based upon a highly disciplined work experience, includes an educational component, and is designed to develop corpsmembers’ character and civic consciousness through rigorous work on public projects.

(c) The corps compensates corpsmembers at not less than the federal minimum wage, and provides corpsmembers assistance in obtaining permanent employment following their participation in the corps program.

(d) The corps engages in recycling and litter abatement projects as well as projects which accomplish the conservationist and other purposes described in subdivisions (a) to (h), inclusive, of Section 14300, and

which assist agencies of local government and other nonprofit community organizations in developing, rehabilitating, and restoring parklands, recreational facilities, and other community resources.

14508. "Consumer" means every person who, for his or her use or consumption, purchases a beverage in a beverage container from a dealer. "Consumer" includes, but is not limited to, a lodging, eating, or drinking establishment, and soft drink vending machines.

14509. "Container manufacturer" means any person who produces beverage containers for filling by beverage manufacturers, including any person who imports these beverage containers from outside of this state for filling by beverage manufacturers.

14509.3. "Cullet" means scrap glass that is derived from postfilled food, drink, or beverage container glass produced or imported for sale in the state.

14509.4. "Convenience zone" means all of the following:

(a) The area within a one-half mile radius of a supermarket.

~~**(b)** A zone designated by the department pursuant to Section 14571.1 in underserved areas with no supermarket. The department shall identify supermarket locations only for the purpose of providing a reference point in the establishment of convenience zones. The department shall not designate convenience zones in the state with a statewide ratio greater than one convenience zone per 10,000 residents in nonrural underserved areas, or greater than one convenience zone per 7,000 residents in rural underserved areas. The recycling location in underserved areas shall be located within one mile of a dealer. In designating convenience zones in underserved areas, the department shall not designate zones which would require establishment of recycling centers or locations in areas adjacent to, and conveniently accessible to, established convenience zones.~~

(b)(1) Notwithstanding subdivision (a), in a rural region, as identified pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 14571, the department may, upon petition by an interested person, increase a convenience zone that meets the requirements of paragraph (2) to include the area within a three-mile radius of a supermarket, if the expanded convenience zone would then be served by a certified recycling center or location.

(2) Paragraph (1) applies only to a convenience zone that is otherwise not being served by a certified recycling center or location meeting the requirements of Section 14571 or is exempted by the department pursuant to Section 14571.8.

(Amended by Chapter 478, Statutes of 2003 (SB 607/Aanestad); effective January 1, 2004)

14509.5. "Curbside program" means a recycling program which meets all of the following criteria:

(a) The program picks up empty beverage containers from individual or multiple family residences, or both, and the empty beverage containers are separated from waste materials prior to being picked up.

(b) The program is operated by, or pursuant to a contract with, a city, county, or

other public agency, or is acknowledged, in writing, by a city, county, or other public agency.

(c) The program accepts empty beverage containers from consumers with the intent to recycle them, but does not pay the refund value.

14510. "Dealer" means a retail establishment which offers the sale of beverages in beverage containers to consumers. However, any lodging, eating, or drinking establishment, or soft drink vending machine operator who engages in the sale of beverages in beverage containers to consumers shall not be deemed a dealer for the purposes of this division, except that these sales are subject to Section 14560. To determine which retail establishments are dealers, the department shall use annual or more frequent updates provided by American Business Information, Inc., as long as the information provided by American Business Information, Inc., is updated at least annually.

14510.5. "Department" means the Department of Conservation.

14510.6. "Director" means the Director of Conservation.

14511. "Distributor" means every person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in these sales. "Distributor" includes any person who imports beverages from outside of this state for sale to dealers or consumers in this state.

14511.5. "Drink" means fruit juice or any other noncarbonated drink.

14511.7. "Dropoff or collection program" means any person, association, nonprofit corporation, church, club, or other organization certified by the department, and which accepts or collects empty beverage containers from consumers with the intention to recycle them, or any waste reduction facility that separates beverage containers from the waste stream with the intent to recycle them. "Dropoff or collection program" does not include a certified recycling center, nonprofit dropoff program, or curbside program.

14512. "Empty beverage container" means a beverage container which meets all of the following requirements:

(a) Has the seal or closure installed by the manufacturer broken or removed.

(b) Does not contain foreign materials other than the residue of the beverage originally packaged in the beverage container by the manufacturer.

(c) Bears the message required by Section 14561, or is a refillable beverage container.

(d) Has a refund value established pursuant to Section 14560.

14512.5. "Food or drink packaging material" means any material which is not a beverage container in which a food or drink is sold in a retail establishment and the food or drink is not intended for consumption on the seller's premises.

14512.6. "For recycling" means that an empty beverage container has been received by a processor who has an arrangement whereby that container will actually be recycled.

14512.7. “Fund” means the California Beverage Container Recycling Fund established pursuant to subdivision (a) of Section 14580.

14513. “Glass beverage container” means a beverage container which has a body consisting primarily of glass.

14513.2. (a) Except as provided under Section 14549, “glass container manufacturer” means a person who manufactures commercial containers, whose principal component part or parts consist of virgin glass, postfilled glass, or any combination of both, for sale in California or for export to other states or countries.

(b) “Glass container manufacturer” includes, but is not limited to, all commercial manufacturing operations which produce beverage containers, food or drink packaging material made primarily of glass, or any combination of both of those items. For beer and other malt beverages manufactured outside the state, the container manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code.

14513.3. “Glass food or drink container” means any nonbeverage container, whose principal component part or parts consist of virgin glass, postfilled glass, or any combination of both, in which any food or drink is sold or offered for sale in California.

14513.4. “Handling fees” means an amount paid to an operator of a supermarket site, a rural region recycler, as defined in Section 14525.5.1, or a nonprofit convenience zone recycler, as defined in Section 14514.7, that is located in a convenience zone for every beverage container redeemed by the operator at the supermarket or within the zone in which the supermarket site is located, by the rural region recycler, or by the nonprofit convenience zone recycler.

14513.5. "HDPE" means a plastic beverage container labeled with a "2" for high-density-polyethylene resin pursuant to Section 18015 and subject to this division.

(Added by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14514. "Managing employee" includes, but is not limited to, any person who manages the operation of a facility or is authorized by the certified operator to sign shipping reports.

14514.4.1. "Neighborhood dropoff program" means a recycling program which meets all of the following criteria:

(a) The program is certified by the department as a dropoff or collection program, as defined by Section 14511.7.

(b) The program has been designated by a city, county, or city and county to provide a recycling opportunity in residential neighborhoods specified by the city, county, or city and county.

(c) The program is located in a rural region, as identified pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 14571.

14514.5. “Nonprofit dropoff program” means a recycling program which meets all of the following criteria:

(a) The program is organized under Section 501(c) or Section 501(d) of the Internal Revenue Code (26 U.S.C. Secs.

501(c), and 501(d)), or operated by, or caused to be operated by, a city, county, or other public agency.

(b) The program is certified by the department pursuant to Section 14541.5.

(c) The program accepts empty beverage containers from consumers with the intent to recycle them, but may pay the refund value. Except as provided in subdivision (c) of Section 14572, if the program pays the refund value, the program shall pay the refund value, for all types of empty beverage containers, regardless of the beverage container's material.

14514.6. "Not for recycling" means that an empty beverage container has been received by a processor who does not have an arrangement whereby that container will actually be recycled.

14514.7. "Nonprofit convenience zone recycler" means a recycling center that meets all of the following criteria:

(a) The recycling center is operated by an organization established under Section 501(c) or 501(d) of Title 26 of the United States Code.

(b) The recycling center is certified by the department pursuant to Section 14538.

(c) The recycling center is located within a convenience zone, but is not necessarily a supermarket site.

14515. "Other beverage container" means a beverage container which has a body consisting of metal, glass, plastic, other materials, or a combination of these, but which is not an aluminum, bimetal, glass, or plastic beverage container.

14515.1. "Out-of-state container" means a used beverage container or used beverage container component that is not subject to Section 14560, and that is brought into this state.

14515.5. "PET container" means a plastic beverage container labeled with a "1" pursuant to Section 18015 and subject to this division.

14515.6. "Physical recycling location" means the area in a convenience zone served by one or more reverse vending machines which accept all empty aluminum, glass, and plastic beverage containers and issue a cash refund or a redeemable credit slip and are located within 10 feet of each other. The physical recycling location shall redeem odd sized empty beverage containers or empty beverage containers made from other material types in a manner approved by the department. "Physical recycling location" does not include a combination of reverse vending machines which accept less than all empty aluminum, glass, and plastic beverage containers and one or more dropoff bins.

14516. "Place of business of the dealer" means the location at which a dealer sells, or offers for sale, beverages in beverage containers to consumers.

14517. "Plastic beverage container" means a beverage container which has a. body consisting primarily of plastic.

14517.5. "Postfilled container" means any container which had been previously filled with a beverage or food.

14518. "Processor" means any person, including a scrap dealer, certified by the department who purchases empty aluminum beverage containers, bimetal beverage

containers, glass beverage containers, plastic beverage containers, or any other beverage containers, including any one or more of those beverage containers, which have a refund value established pursuant to this division, from recycling centers in this state for recycling, or, if the container is not recyclable, not for recycling, and who cancels, or who certifies to the department in a form prescribed by the department the cancellation of, the refund value of these empty beverage containers by processing empty beverage containers, in any manner which the department may prescribe. However, the department shall not take any action regulating scrap dealers or recycling centers who are processors or recycling centers unless authorized by and pursuant to the goals of this division.

14518.4. “Processing fee” means the amount paid by beverage manufacturers to the department pursuant to Section 14575.

14518.5. “Processing payment” means an amount paid to processors, dropoff or collection programs, curbside programs, and recycling centers by the department pursuant to subdivision (a) of Section 14573 and subdivision (a) of Section 14573.5 when the department determines that the scrap value being offered by container manufacturers, beverage manufacturers, or willing purchasers for a particular container material is insufficient to insure the economic recovery of the container type at the minimum number of recycling centers or locations required pursuant to Section 14571. The processing payment shall be determined by the department pursuant to Section 14575.

14519. “Recycle,” “recycled,” “recycling,” or “recyclable” means the reuse or refilling of empty beverage containers, or the process of sorting, cleansing, treating, and reconstituting empty postfilled beverage containers for the purpose of using the altered form. “Recycle,” “recycled,” “recycling”, or “recyclable” does not include merely sorting, shredding, stripping, compressing, storing, landfilling with, or disposing of an empty beverage container.

14519.5. "Recycler" means a recycling center, dropoff or collection program, or curbside program.

14520. “Recycling center” means an operation which is certified by the department and which accepts from consumers, and pays or provides the refund value pursuant to Section 14572 for, empty beverage containers intended to be recycled.

14520.5. “Recycling location” means a place, mobile unit, reverse vending machine, or other device where a certified recycling center accepts one or more types of empty beverage containers from consumers, and pays or provides the refund value for one or more types of empty beverage containers. For purposes of subdivision (c) of Section 14572, “recycling location” means the aluminum reverse vending machine and does not mean the machine’s physical location.

14520.6. “Noncertified recycler” means a person, entity, or operation which is not certified by the department and which purchases empty beverage containers from consumers, or from dropoff or collection programs.

14521. “Recycling rate” means the proportion of empty beverage containers by type returned to processors for recycling, measured in the manner prescribed in Section 14551.

14522.5. "Redemption" and "redeem" means the return to a recycling center or location of an empty beverage container for a refund of at least the refund value.

14523. "Redemption payment" means the minimum amount paid by a distributor to the department for every beverage container sold or transferred to a dealer.

14523.5. "Redemption rate" means the proportion of empty beverage containers returned to processors measured in the manner prescribed in Section 14551.

14524. "Refund value" means the minimum refundable value established for each type of beverage container pursuant to Section 14560 which is paid by the following:

(a) A certified recycling center to the consumer or dropoff or collection center for each beverage container redeemed by the consumer or dropoff or collection center. With respect to consumers returning containers to recycling centers, the refund value shall not be subject to tax under the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) or the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

(b) A processor to a certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program for each beverage container received from the certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program.

(c) The department to a processor, for every beverage container received by the processor from a certified recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program.

14525. "Refillable beverage container" means any aluminum beverage container, bimetal beverage container, glass beverage container, plastic beverage container, or other beverage container, holding 150 fluid ounces or less of beverage, which has a minimum deposit of three cents ($ 0.03), and which ordinarily would be returned to the manufacturer to be refilled and resold.

14525.5. "Reverse vending machine" means a mechanical device which accepts one or more types of empty beverage containers and issues a cash refund or a redeemable credit slip with a value not less than the container's refund value. The refund value payments shall be aggregated and then paid, if more than one container is redeemed in a single transaction.

14525.5.1. "Rural region recycler" means an operator that is certified pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 14571, and who accepts or collects empty beverage containers from consumers pursuant to Section 14572 with the intention to recycle them.

14526. "Scrap value" means the price paid for container material types subject to this division, after shipping and handling costs are deducted.

14526.5. "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items. For purposes of determining which dealers are supermarkets, the department shall use the

annual updates of the Progressive Grocer Marketing Guidebook and any computer printouts developed in conjunction with the guidebook.

14526.6. "Supermarket site" means any certified recycling center which redeems all types of empty beverage containers in accordance with Section 14572, and which is located within, or outside and immediately adjacent to the entrance of, or at, or within a parking lot or loading area surrounding, a supermarket which is the focal point of a convenience zone, or a dealer that is located within that zone, and which is accessible to motor traffic.

14527. "Use or consumption" includes the exercise of any right or power over a beverage incidental to the beverage's ownership, including, but not limited to, drinking the beverage. "Use or consumption" does not include the sale, or the keeping or retention, of a beverage for the purposes of sale.

14528. "Universal product code" is an 11-digit, all-numeric code that represents a beverage container or other consumer package of a particular brand, size, type, and manufacturer by using a series of alternating bars and spaces for electronic scanning.

14528.1. "Voluntary artificial scrap value" means a price paid by a willing purchaser of empty PET containers, ~~pursuant to Section 14575.1,~~ that reflects the payment of the scrap value for all PET containers sold, and that, when combined with payments made from the PET ~~Processing Fee Account pursuant to subdivision (f) of Section 14575~~ processing fee account pursuant to clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 14581, is equal to, or more than, the recycling cost for empty PET containers, as determined in subdivision (d) of Section 14575.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14528.5. "Wine and distilled spirit cooler" means a beverage containing wine or distilled spirits to which is added concentrated or unconcentrated juice or flavoring material and containing not more than 7 percent alcohol by volume.

14529. This division is a matter of statewide interest and concern and is applicable uniformly throughout the state. Accordingly, this division occupies the whole field of regulation of recycling-related refund values, redemption payments, deposits, and similar fees relating to beverage containers, as provided in this division, and to containers of wine and distilled spirits products. No city, county, or other public agency may enforce or implement any existing or new ordinance, resolution, regulation, or rule establishing recycling-related refund values or redemption payments, deposits, or similar fees relating to these containers in the state unless expressly authorized by this division. If a federal law is enacted which establishes recycling-related refund values, redemption payments, deposits, and similar fees, relating to beverage containers, other than a federal law only affecting federal lands, or if a state law is enacted by initiative, which establishes recycling-related refund values, redemption payments, deposits, and similar fees relating to beverage containers, this division shall become inoperative. This section does not prohibit the implementation or enforcement of any ordinance or regulation governing curbside or dropoff recycling programs operated by, or pursuant to a contract with, a city, county, or other

public agency, including actions relating to fees, or establishing fees, for these programs.

14529.5. Any action to increase recycling taken by the department, or by any person or entity, affecting scrap values, the quantities of materials being recycled, or the method of invoicing the sale of beverages pursuant to this division is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) and the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code). This section does not apply to any action taken by a recycling center to increase the recycling of beverage containers.

14529.7. (a) Except as provided in subdivision (b), this division does not apply to any program involving the collection and payment of deposits for beverage containers sold, used, or consumed at national parks and monuments, military installations, or any other property owned by and under the jurisdiction of the United States.

(b) To the extent permitted by federal law, this division, including, but not limited to, Section 14560.5, shall apply to a national park or monument, military installation, or any other property owned by, and under the jurisdiction of, the United States, with regard to a beverage container not otherwise subject to a program involving the collection and payment of deposits for beverage containers.

(c) For purposes of this section, "a program involving the collection and payment of deposits" means a program, other than one imposed pursuant to this division, at a national park or monument, military installation, or any other property owned by, and under the jurisdiction of, the United States, that imposes a deposit on a beverage container at the time of sale and provides an opportunity for the beverage container purchaser to redeem the deposit at the national park or monument, military installation, or other property owned by, and under the jurisdiction of, the United States.

CHAPTER 3. ADMINISTRATION

14530. This division shall be administered by the department. Notwithstanding Section 607, the department may, for organizational purposes, create a new division, bureau, or office to administer this division. If a new division, bureau, or office is created, any reference to "department" or "director" in this division shall be deemed to be a reference to that entity and the officer in charge of that entity.

14530.1. There is hereby created within the department a recycling financial analysis and policy development unit, to develop, analyze, consolidate, and evaluate economic and policy proposals to carry out the objectives of this division, including, but not limited to, all of the following:

(a) Evaluate the solvency of the fund and the account on an ongoing basis in order to make recommendations and report to the Legislature.

(b) Identify the fiscal impacts of proposed recycling programs, or changes to existing recycling programs.

(c) Assess the economic impacts of recycling proposals and programs on the state's citizens and businesses, including the impact of adding new container types into existing law.

(d) Develop recommendations to better integrate the various recycling alternatives available from state government, local government and private industry with the objective of reducing recycling costs to citizens and businesses and meeting the 80 percent recycling goal established by this division.

14530.2. The Division of Recycling shall be administered by an assistant director who is appointed by the Governor. The appointment shall be exempt from civil service.

14530.5. (a) For purposes of entering into contracts for consulting, promotional, or advisory services necessary to implement this division, the requirements of Sections 11042 and 14615 of the Government Code and Sections 10295 and 10318 of the Public Contract Code do not apply to the activities of the department pursuant to this division, except that any sole source contract awarded by the department shall be reviewed and approved by the Department of General Services.

(b) In addition to any regulations which the department is required by statute to adopt, the department may adopt any other rules and regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code which the department determines may be necessary or useful to carry out this division or any of the department's duties or responsibilities imposed pursuant to this division.

(c) The department may prepare, publish, and issue printed pamphlets, promotional materials, and bulletins which the director determines to be necessary for the dissemination of information to the public concerning the activities of the department pursuant to this division.

14530.6. Upon the request of the department, the Attorney General shall represent the department and the state in litigation concerning affairs of the department.

14536. (a) Except as provided in subdivision (b), the director shall adopt, amend, or repeal all rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b)(1) The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14550, 14561, 14574, 14575, 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 11349.1 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.

14536.1. Notwithstanding Section 14536, if the department determines that it is necessary to adopt or amend regulations to implement Section 14575, the department may adopt or amend those regulations as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

14536.5. (a) In carrying out the division, the department may solicit and use all expertise available in other state agencies and where an existing state agency performs functions of a similar nature to the department's functions, the department may contract with, or cooperate with, the agency in carrying out this division.

(b) Notwithstanding subdivision (a), the Department of Food and Agriculture may, as requested by the department, collect, compile, and report information regarding the importation of filled or postfilled beverage containers. Border agricultural inspection stations and any other appropriate information gathering focal points may be used and the plant quarantine officers and supervisors of the Department of Food and Agriculture shall collect, compile, and report information requested by the department pursuant to this subdivision. Recovery of costs incurred by the Department of Food and Agriculture shall be accomplished through an interagency agreement with the department.

14537. The department shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts are subject to an annual audit by an auditing firm selected by the department. The auditing firm or the department shall also conduct a selective audit of entities

making payments to, or receiving payments from, the department to determine whether redemption payments and applicable processing fees are being paid to the department on all beverage containers sold in California, and that refund values and processing payments are being paid out properly by the department.

14538. (a) The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the certification of recycling centers, including standards and requirements for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. A recycling center shall meet all of the standards and requirements contained in the regulations for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(1) The operator of the recycling center demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the recycling center exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of this division and regulations adopted pursuant to this division.

(3) The operator of the recycling center notifies the department promptly of any material change in the nature of his or her operations which conflicts with information submitted in the operator's application for certification.

(b) A certified recycling center shall comply with all of the following requirements for operation:

(1) The operator of the recycling center shall not pay a refund value for, or receive a refund value from any processor for, any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(2) The operator of a recycling center shall take those actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, a certified recycling center shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type.

(4) A certified recycling center shall not pay any refund values, processing payments, or administrative fees to a noncertified recycler.

(5) A certified recycling center shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the certified recycling center knew, or should have known, were coming into the state from out of the state.

(6) A certified recycling center shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the certified recycling center knew, or should have known, were received from noncertified recyclers or on beverage

containers that the certified recycling center knew, or should have known, come from out of the state.

(7) A certified recycling center shall prepare and maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports that are required to be prepared by the recycling center, or that are required to be obtained from other recycling centers.

(B) Consumer transaction receipts.

(C) Consumer transaction logs.

(D) Rejected container receipts on materials subject to this division.

(E) Receipts for transactions with beverage manufacturers on materials subject to this division.

(F) Receipts for transactions with beverage distributors on materials subject to this division.

(G) Documents authorizing the recycling center to cancel empty beverage containers.

(H) Weight tickets.

(8) In addition to the requirements of paragraph (7), a certified recycling center shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, payments made from the fund to the certified recycling center pursuant to Section 14573.5 that are based on the documents specified in paragraph (7), that are not prepared or maintained in compliance with the department's regulations, and that do not allow the department to verify claims for program payments.

(d) The department may certify a recycling center that will operate less than 30 hours a week, as specified in paragraph (2) of subdivision (b) of Section 14571.

14539. (a) The department shall certify processors pursuant to this section. The director shall adopt, by regulation, requirements and standards for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(1) The processor demonstrates to the satisfaction of the department that the processor will operate in accordance with this division.

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the processor exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of this division and regulations adopted pursuant to this division.

(3) The processor notifies the department promptly of any material change in the nature of the processor's operations that conflicts with the information submitted in the operator's application for certification.

(b) A certified processor shall comply with all of the following requirements for operation:

(1) The processor shall not pay a refund value for, or receive a refund value from the department for, any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(2) The processor shall take those actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, the processor shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type, for which the processor is certified.

(4) A processor shall not pay any refund values, processing payments, or administrative fees to a noncertified recycler. A processor may pay refund values, processing payments, or administrative fees to any entity that is identified by the department on its list of certified recycling centers.

(5) A processor shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the processor knew, or should have known, were coming into the state from out of the state.

(6) A processor shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the processor knew, or should have known, were received from noncertified recyclers or on beverage containers that the processor knew, or should have known, come from out of the state. A processor may claim refund values, processing payments, or administrative fees on any empty beverage container that does not come from out of the state and that is received from any entity that is identified by the department on its list of certified recycling centers.

(7) A processor shall take the actions necessary and approved by the department to cancel containers to render them unfit for redemption.

(8) A processor shall prepare or maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports that are required to be prepared by the processor or that are required to be obtained from recycling centers.

(B) Processor invoice reports.

(C) Cancellation verification documents.

(D) Documents authorizing recycling centers to cancel empty beverage containers.

(E) Processor-to-processor transaction receipts.

(F) Rejected container receipts on materials subject to this division.

(G) Receipts for transactions with beverage manufacturers on materials subject to this division.

(H) Receipts for transactions with distributors on materials subject to this division.

(I) Weight tickets.

(9) In addition to the requirements of paragraph (7), a processor shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

(10) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, any payments made by the department to the processor pursuant to Section 14573 that are based on the documents specified in paragraph (8), that are not prepared or maintained in compliance with the department's regulations, and that do not allow the department to verify claims for program payments.

14539.5. (a) The department shall certify dropoff and collection programs pursuant to this section. The director shall adopt, by regulation, requirements and standards for certification and a dropoff or collection program shall meet all the standards and requirements contained in the regulations for certification. The regulations shall require that all information be submitted to the department under penalty of perjury. The regulations shall require, in addition to any other conditions that may be imposed by the department, that both of the following conditions be met for certification:

(1) The dropoff or collection program demonstrates, to the satisfaction of the department, that the dropoff or collection program will operate in accordance with this division.

(2) The dropoff or collection program notifies the department promptly of any material change in the nature of its operations that conflicts with the information submitted in the application for certification.

(b) A certified dropoff or collection program shall not receive any refund value or processing payment on an empty beverage container that the certified dropoff or collection program knew, or should have known, was received from a noncertified recycler, on any beverage container that the certified dropoff or collection program knew or should have known came from out of this state, or any other beverage container or other product that does not have a refund value established pursuant to Section 14560.

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, any payment made from the fund to a dropoff or collection program pursuant to Section 14573.5 that is based on a document that is not prepared or maintained in compliance with any applicable recordkeeping requirements required pursuant to this division or the department's regulations and that does not allow the department to verify the claims for those payments.

14540. The department may review and verify all applications for certification of recycling centers and processors, and may conduct a comprehensive field investigation of any applicant in any manner which the department deems necessary to promote the purposes of this division. This division does not prohibit the department from certifying the same location or entity as both a processor and a recycling center.

14541. (a) The department may issue a certificate pursuant to an initial or renewal application for certification as probationary, and the department may issue any other certificate as probationary pursuant to an enforcement action.

(b) A probationary certificate issued pursuant to this section shall be issued for a

limited period of not more than two years. Before the end of the probationary period, the department shall issue a nonprobationary certificate, extend the probationary period for not more than one year, or, after notice to the probationary certificate holder, revoke the probationary certificate. Subsequent to the revocation, the former probationary certificate holder may request a hearing, which, notwithstanding, Section 11445.20 of the Government Code, shall be conducted in the same form as a hearing for an applicant whose original application for certification is denied.

(c) If a hearing is requested pursuant to subdivision (b) and the party requesting the hearing fails to appear on the date scheduled, and does not notify the department at least five days prior to the hearing date that the party will not appear, the department may recover from the party all costs and fees incurred by the department, including attorneys' and experts' fees, and any other cost associated with preparing for, or conducting, the hearing.

(d) If conditions are imposed on the certificate holder as part of a disciplinary proceeding conducted pursuant to Section 14591.2, the certificate shall be considered probationary. If, at any time, the certificate holder violates any term or condition of the probationary certificate, the certificate may be revoked or suspended, after three days' notice, without any further hearing by the department.

14541.5. Any certification or registration granted by the department is a privilege and not a vested right or interest.

CHAPTER 4. REPORTING

14549. (a) Every glass container manufacturer shall report to the department each month, by a method as determined by the department, the amount of total tons of new glass food, drink, and beverage containers made in California by that glass container manufacturer and the tons of California postfilled glass used in the manufacturing of those new containers.

(b) Each glass container manufacturer in the state shall use a minimum percentage of 35 percent of postfilled glass in the manufacturing of their glass food, drink, or beverage containers measured in the aggregate, on an annual basis, except that if a glass container manufacturer demonstrates to the satisfaction of the department that its use of postfilled glass during the annual period is made up of at least ~~75~~ 50 percent ~~mixed color~~ mixed-color cullet, then that manufacturer shall use a minimum percentage of 25 percent postfilled glass in the manufacturing of its glass~~,~~ food, drink, or beverage containers, measured in the aggregate, on an annual basis.

(c) A glass container manufacturer may seek a reduction or waiver of the minimum postfilled glass percentage required to be used in the manufacture of glass food, drink, or beverage containers pursuant to subdivision (b). The department may grant a reduction or waiver of the percentage requirement if it finds and determines that it is technologically infeasible for the glass container manufacturer to achieve the percentage requirement or if the department determines that a glass container manufacturer cannot achieve the minimum percentage because of a lack of available glass cullet.

(d) For the purposes of this section, ~~"mixed color~~ "mixed-color cullet" means cullet that does not meet the American Society for Testing and Materials (ASTM) standard specifications for color mix of color sorted postfilled glass as raw material for the manufacture of glass containers.

(Amended by Chapter753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14549.1. In order to improve the quality and marketability of glass containers collected for recycling in the state by curbside recycling programs, the department may, consistent with Section 14581 and subject to the availability of funds, pay a quality glass incentive payment to either an operator of a curbside recycling program registered pursuant to Section 14551.5, or to any other entity certified pursuant to this division, that color sorts glass beverage containers for recycling. The total amount paid by the department pursuant to this section shall not exceed three million dollars ($3,000,000) per calendar year. The department shall make a quality glass incentive payment based on all of the following:

(a) The amount of the quality glass incentive payment shall be up to ~~twenty-five~~ thirty dollars ~~($25)~~($30) per ton, as determined by the department.

(b) The department shall make a quality glass incentive payment only for color-sorted glass beverage containers that are substantially free of contamination.

(c) The department shall make a quality glass incentive payment only for glass

beverage containers that are either collected color sorted by curbside recycling programs, or collected commingled by curbside recycling programs and subsequently color sorted by the collector or any other entity certified pursuant to this division.

(d) Only one payment shall be made for each color-sorted glass beverage container collected.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14549.5. ~~Within 90 days~~ On or before the 90th day after the effective date of the act amending this section, and annually thereafter, or more frequently as determined to be necessary by the department, the department shall review and, if necessary in order to ensure payment of the most accurate commingled rate feasible, recalculate commingled rates paid for beverage containers and postfilled containers paid to curbside recycling programs, collection programs, and recycling centers. Prior to recalculating a commingled rate pursuant to this section, the department shall do all of the following:

(a) Consult with private and public operators of curbside recycling programs, collection programs, and recycling centers concerning the size of the statewide sample, appropriate sampling methodologies, and alternatives to exclusive reliance on a statewide commingled rate.

(b) At least 60 days prior to the effective date of any new commingled rate, hold a public hearing, after giving notice, to make available to the public and affected parties the department's review and any proposed recalculations of the commingled rate.

(c) At least 60 days prior to the effective date of any new commingled rate, and upon the request of any party, make available documentation or studies which were prepared as part of the department's review of a commingled rate.

(d) ~~This section shall become operative on January 1, 2001.~~

(1) Notwithstanding this division, the department may calculate a curbside recycling program commingled rate pursuant to this subdivision for bimetal containers and a combined commingled rate for all plastic beverage containers displaying the resin identification code "3," "4," "5," "6," or "7" pursuant to Section 18015.

(2) The department may enter into a contract for the services required to implement the amendments to this section made by the act of the first half of the 2003-04 Regular Session of the Legislature amending this section. The department may not expend more than two hundred fifty thousand dollars ($250,000) for each year of the contract. The contract shall be paid only from revenues derived from redemption payments and processing fees paid on plastic beverage containers displaying the resin identification code "3," "4," "5," "6," or "7" pursuant to Section 18015. If the department determines that insufficient funds will be available from these revenues, after refund values are paid to processors and the reduction is made in the processing fee pursuant to subdivision (f) of Section 14575 for these containers, the department may determine not to calculate a commingled rate pursuant to this subdivision.

(Amended by Chapter753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14549.6. (a) The department, consistent with Section 14581 and subject to the availability of funds, shall annually pay a total of fifteen million dollars ($15,000,000)

per fiscal year to operators of curbside programs and neighborhood dropoff programs that accept all types of empty beverage containers for recycling. The payments shall be for each container collected by the curbside or neighborhood dropoff programs and properly reported to the department by processors, based upon all of the following:

(1) The payment amount shall be calculated based upon the volume of beverage containers collected ~~during the fiscal year~~ by curbside and neighborhood dropoff programs during the 12-month calendar year ending on December 31 of the fiscal year for which payments are to be made.

(2) The per-container rate shall be calculated by dividing the total volume of beverage containers collected, as determined pursuant to paragraph (1), into the sum of fifteen million dollars ($15,000,000).

(3) The amount to be paid to each operator of a curbside and neighborhood dropoff program shall be based upon the per-container rate, calculated pursuant to paragraph (2), multiplied by the curbside program's total reported beverage container volume ~~during the fiscal year for which those payments are made~~ calculated pursuant to paragraph (1).

(b) The amounts paid pursuant to this section shall be expended by operators of curbside and neighborhood dropoff programs only for activities related to beverage container recycling.

(c) The department shall disburse payments pursuant to this section not ~~sooner~~ later than the ~~6th month~~ end of the fiscal year following the ~~fiscal~~ calendar year for which the payments are ~~being made~~ calculated pursuant to paragraph (1) of subdivision (a), subject to the availability of funds.

(d) The operator of a curbside program or neighborhood dropoff program shall make available for inspection and review any relevant record that the department determines is necessary to verify compliance with this section.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14549.7. (a) Consistent with Section 14581, the department shall pay up to six million eight hundred forty thousand dollars ($6,840,000) to the City of San Diego for a pilot program to expand that city's curbside recycling program. Payments shall be contingent upon the execution of a cooperative agreement between the department and the City of San Diego. The cooperative agreement shall require the City of San Diego to make curbside recycling services available, on or before January 1, 2003, to a minimum of 190,000 homes that are not provided, as of January 1, 2000, with curbside recycling, and shall include an implementation and payment schedule. The department shall make these payments once every three months, contingent on the City of San Diego making satisfactory progress toward implementation of the terms of the cooperative agreement, except the department shall make the first payment within 30 days of the signing of the cooperative agreement.

(b) This section shall remain in effect until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

14550. (a)(1) Every processor shall report to the department for each month the amount of empty beverage containers, by material type and weight of container or material, excluding refillable beverage containers, received from recycling centers and curbside programs for recycling, and the scrap value paid for glass, PET, and bimetal containers and any beverage container that is assessed a processing fee. Every processor shall also report to the department for each month the amount of other postfilled aluminum, glass, and plastic food and drink packaging materials sold filled to consumers in this state and returned for recycling. These reports shall be submitted within 10 days after each month, in the form and manner that the department may prescribe.

(2) The department shall treat all information reported pursuant to this section by a processor as commercial or financial information subject to the procedures established pursuant to Section 14554.

(b) Every distributor who sells or offers for sale in this state beverages in aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, or other beverage containers, including refillable beverage containers of these types, shall report to the department for each month the number of beverages sold in these beverage containers in this state which are labeled pursuant to Section 14561, by material type and size and weight of container or any other method as the department may prescribe. These reports shall be submitted by the day when payment is due, consistent with the applicable payment schedule specified in subdivision (a) of Section 14574, in the form and manner which the department may prescribe.

(c) Every distributor who sells or offers for sale in this state beverages in refillable beverage containers and who pays a refund value to distributors, dealers, or consumers who return these containers for refilling, shall report to the department for each month the number of these beverage containers returned empty to be refilled, by material type and size of container or any other method which the department may prescribe. These reports shall be submitted by the day when payment is due, consistent with the schedule specified in subdivision (a) of Section 14574, in the form and manner which the department may prescribe.

(d) Notwithstanding subdivision (b), a distributor who elects to make an annual payment pursuant to subdivision (b) of Section 14574 may, upon the approval of the department, submit the reports required by this section annually to the department. The reports shall accompany the annual payment submitted pursuant to Section 14574.

14551. (a) The department shall establish reporting periods for the reporting of redemption rates and recycling rates. Each reporting period shall be six months. The department shall determine all of the following for each reporting period and shall issue a report on its determinations, within 130 days of the end of each reporting period:

(1) Sales of beverages in aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers.

(2) Returns for recycling, and returns not for recycling, of empty aluminum beverage containers, bimetal beverage containers,

glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers returned to distributors pursuant to Section 14572. These numbers shall be calculated using the average current weights of beverage containers, as determined and reported by the department. To these numbers shall be added and separately reported the following, if greater than, or equal to, zero:

(A) All empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling, and reported by weight to the department which do not have a refund value less the number specified in subparagraph (B).

(B) The number of beverage containers which comprise the first five percentage points of the redemption rate without including the empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling and reported by weight to the department which do not have a refund value.

(3) An aluminum beverage container redemption rate, the numerator of which shall be the number of empty aluminum beverage containers returned, including refillable aluminum beverage containers and empty postfilled aluminum food or drink packaging material included in paragraph (2), and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(4) An aluminum beverage container recycling rate, the numerator of which shall be the number of empty aluminum beverage containers returned for recycling, including refillable aluminum beverage containers, and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(5) A bimetal beverage container redemption rate, the numerator of which shall be the number of empty bimetal beverage containers returned, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(6) A bimetal beverage container recycling rate, the numerator of which shall be the number of empty bimetal beverage containers returned for recycling, including refillable bimetal beverage containers, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(7) A glass beverage container redemption rate, the numerator of which shall be the number of empty glass beverage containers returned, including refillable glass beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of glass beverage containers sold in this state.

(8) A glass beverage container recycling rate, the numerator of which shall be the number of empty glass beverage containers returned for recycling, including refillable glass beverage containers, and the denominator of which shall be the number of glass beverage containers sold in this state.

(9) A plastic beverage container redemption rate, the numerator of which shall be the number of empty plastic beverage containers returned, including refillable plastic beverage containers and

empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of plastic beverage containers sold in this state.

(10) A plastic beverage container recycling rate, the numerator of which shall be the number of empty plastic beverage containers returned for recycling, including refillable plastic beverage containers, and the denominator of which shall be the number of plastic beverage containers sold in this state.

(11) A redemption rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(12) A recycling rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned for recycling, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(13) The department may define categories of other beverage containers, and report a redemption rate and a recycling rate for each such category of other beverage containers.

(14) The volumes of materials collected from certified recycling centers, by city or county, as requested by the city or county, if the reporting is consistent with the procedures established pursuant to Section 14554 to protect proprietary information.

(b) The department shall determine the manner of collecting the information for the reports specified in subdivision (a), including establishing procedures, to protect any proprietary information concerning the sales and purchases.

14551.4. The department shall make available the information collected pursuant to subdivision (a) of Section 14551, concerning the volumes of materials collected from certified recycling centers, only to a governmental agency which requests the information, including a city or county, or an entity specifically designated by the city or county to receive the information if the entity requests the information, if all of the following conditions are met:

(a) The request is made in writing.

(b) All information provided by the department is provided using the aggregate amounts collected in the city or county unless the city or county, or an entity specifically designated by the city or county to receive the information, requests the information provided by each individual certified recycling center.

(c) All information provided to the governmental agency, including a city or county, or an entity specifically designated by the city or county to receive the information, is considered proprietary and confidential in nature and protected in accordance with the requirements of subdivision (b) of Section 14551 of the Public Resources Code, Section 14554 of the Public Resources Code, and subdivision (e) of Section 6254.5 of the Government Code.

14551.5. (a) The department shall register the operators of curbside programs pursuant to this section.

(b) Each curbside program that receives refund values and administrative fees from certified processors, or that receives refund values from certified recycling centers, shall register with the department for an identification number. No curbside program may receive refund values or administrative fees without a valid identification number.

(c) The director shall adopt, by regulation, a procedure for the registration of curbside programs. This procedure shall include standards and requirements for registration. These regulations shall require that all information be submitted to the department under penalty of perjury. A curbside program shall meet all of the standards and requirements contained in the regulations for registration.

(d) The department shall require that the identification numbers received pursuant to this section be used on shipping reports for material collected by curbside programs pursuant to Sections 14538 and 14539 and on all other reports or documentation required by the department to administer this division.

(e) An operator of a curbside program registered pursuant to this section shall be deemed a certificate holder for purposes of this division.

14552. (a) The department shall establish and implement an auditing system to ensure that the information collected, and refund values and redemption payments paid pursuant to this division, comply with the purposes of this division. Notwithstanding Sections 14573 and 14573.5, the auditing system adopted by the department may include prepayment or postpayment controls.

(b)(1) The department may audit or investigate any action taken during the following periods and may determine if there was compliance with this division and the regulations adopted pursuant to this division, during any, or all, of that period:

(A) On and before December 31, 2001, the department may audit or investigate any action taken up to two years before the onset of the audit or investigations.

(B) On and after January 1, 2002, the department may audit or investigate any action taken up to three years before the onset of the audit or investigation.

(2) Notwithstanding any other provision of law establishing a shorter statute of limitation, the department may take an enforcement action, including, but not limited to, an action for restitution or to impose penalties, at any time within two years after the department discovers, or with reasonable diligence, should have discovered, a violation of this division or the regulations adopted pursuant to this division.

(c) During the conduct of any inspection, including, but not limited to, an inspection conducted as part of an audit or investigation, the entity that is the subject of the inspection shall, during its normal business hours, provide the department with immediate access to its facilities, operations, and any relevant record, that, in the department's judgment, the department determines are necessary to carry out this section to verify compliance with this division and the regulations adopted pursuant to this division.

(1) The department may take disciplinary action pursuant to Section 14591.2 against any person who fails to provide the department with access pursuant to this subdivision including, but not limited to, imposing penalties and the immediate suspension or termination of any certificate or registration held by the operator.

(2) The department shall protect any information obtained pursuant to this section in accordance with Section 14554, except that this section does not prohibit the department from releasing any information that the department determines to be necessary in the course of an enforcement action.

(d) The auditing system adopted by the department shall allow for reasonable shrinkage in material due to moisture, dirt, and foreign material. The department, after an audit by a qualified auditing firm and a hearing, shall adopt a standard to be used to account for shrinkage and shall incorporate this standard in the audit process.

(e) If the department prevails against any entity in any civil or administrative action brought pursuant to this division, and money is owed to the department as a result of the action, the department may offset the amount against amounts claimed by the entity to be due to it from the department. The department may take this offset by withholding payments from the entity or by authorizing all processors to withhold payment to a certified recycling center.

(f) If the department determines, pursuant to an audit or investigation, that a distributor or beverage manufacturer has overpaid the redemption payment or processing fee, the department may do either of the following:

(1) Offset the overpayment against future payments.

(2) Refund the payment pursuant to Article 3 (commencing with Section 13140) of Chapter 2 of Part 3 of Division 3 of Title 2 of the Government Code.

14552.5. (a) The department shall supply all certified processors with a standardized rejection form ~~which~~ that shall include, but not be limited to, the name of the parties rejecting the postfilled ~~glass~~ beverage container material, the date of the rejections, the reasons for the rejections, the amount of rejected material, and a detailed accounting of the steps taken by the processor and ~~glass~~ container manufacturer to avert landfilling or disposal of the material, as required by subdivision (c) of Section 14552.51.

(b) Every ~~glass~~ container manufacturer shall fill out the standardized rejection form specified in subdivision (a) whenever that ~~glass~~ container manufacturer rejects a load of redeemed ~~glass~~ beverage container materials physically delivered to the manufacturer's place of business and offered for sale by a certified processor. The rejection form shall be filled out by the ~~glass~~ container manufacturer at the time of the rejection and immediately given to the certified processor for submittal to the department. Any ~~glass~~ container manufacturer who refuses to fill out the standardized rejection form required by this subdivision is in violation of this division and is subject to the fines and penalties in ~~Section~~ Sections 14591 and 14591.1.

(c) If a processor has made a good faith effort, as determined by the department, to locate a willing purchaser and is unsuccessful, the processor may fill out the

standardized rejection form specified in subdivision (a) and submit it to the department. The processor rejection form shall include, but is not limited to, the name of the processor, the ~~glass~~ container manufacturers and other potential purchasers contacted, a detailed accounting of the methods used to contact the potential buyers, the date of the rejections, the reasons given for the rejections, the amount of postfilled ~~glass~~ beverage container material rejected, and any other steps taken to avert landfilling or disposal of the material.

(d) If a ~~glass~~ container manufacturer rejects a load of postfilled ~~glass~~ containers by telephone, written correspondence of any kind, or other similar method, the ~~glass~~ container manufacturer shall, in a manner prescribed by the department, keep accurate logbooks of the offer of loads by the certified processor, and make that logbook available for inspection by the department upon demand. The logbook shall contain, but is not limited to, the same information required in the rejection form pursuant to subdivision (a).

(e) The standardized rejection form specified in subdivision (a) shall be submitted to the department by the certified processor with the written request to dispose of the redeemed material submitted pursuant to Section 14552.51. This material shall not be disposed of without a written authorization to do so by the department pursuant to Section 14552.51.

(f) Nothing in this section shall be interpreted to lessen certified processors' and ~~glass~~ container manufacturer's responsibilities relating to ~~glass~~ beverage container recycling, or diminish in any way the department's authority to carry out the intent and goals of this division.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14552.51. (a) ~~On or after January 1, 1991, no~~ A certified processor seeking to dispose of rejected postfilled containers may not dispose of rejected postfilled containers unless the certified processor first submits to the department, in writing, a request to dispose of the rejected material. No certified processor shall dispose of the rejected material prior to obtaining written permission from the department. If the department fails to respond to a written request to dispose of rejected postfilled ~~glass~~ beverage container materials within 10 days of receipt of the request, the processor's request for disposal is deemed approved by the department.

(b) All rejected loads of postfilled containers shall be available and subject to inspection by the department.

(c) All possible steps to avert the disposal of the loads of postfilled containers, as determined by the department, shall be taken by all ~~glass~~ container manufacturers and processors. All transactions or attempted transactions involving rejecting postfilled containers shall be thoroughly documented on the standardized rejection form pursuant to Section 14552.5. The ~~glass~~ container manufacturer and the certified processor are jointly and severally responsible for this effort.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14553. (a) All reports, claims, and other information required pursuant to this division and submitted to the department shall be complete, legible, and accurate, as determined by the department by regulation, and shall be signed, by an officer, director,

managing employee, or owner of the certified recycling center, processor, distributor, beverage manufacturer, container manufacturer, or other entity.

(b) The department may inspect the operations, processes, and records of any entity required to submit a report to the department pursuant to this division to determine the accuracy of the report and compliance with the requirements of this division.

(c) A violation subject to the penalties specified in Section 14591.1.

14554. The department shall establish procedures to protect any privileged, confidential, commercial, or financial information obtained while collecting information for carrying out the requirements of this division. Any privileged, confidential, commercial, or financial information obtained in confidence by the department is not a public record for purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

14555. (a) On or before January 1, 2004, the department shall submit to the Legislature a report regarding beverage container recycling in California's public elementary, middle, and high schools.

(b) The report shall include, but not be limited to, all of the following:

(1) A description of department public outreach efforts in schools.

(2) A description of local conservation corps recycling activities in the schools.

(3) A description of school-based recycling programs sponsored by certified certified recycling operations.

(4) A description of any additional school-based beverage container recycling efforts.

(c) The report may include recommendations of additional policies or programs that may increase beverage container recycling in schools.

(d) The department shall complete the report using existing resources.

CHAPTER 5. MINIMUM REDEMPTION VALUE

14560. (a)(1) ~~Every~~ Except as provided in paragraph (3), a beverage distributor shall pay the department, for deposit into the fund, a redemption payment of ~~two and one-half~~ four cents ~~($0.025)~~ ($0.04) for ~~every~~ a beverage container sold or offered for sale in this state by the distributor.

(2) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of redemption payments and refund values.

(3) On and after July 1, 2007, the amount of the redemption payment and refund value for a beverage container with a capacity of less than 24 fluid ounces sold or offered for sale in this state by a dealer shall equal five cents ($0.05) and the amount of redemption payment and refund value for a beverage container with a capacity of 24 fluid ounces or more shall be ten cents ($0.10), if the aggregate recycling rate reported pursuant to Section 14551 for all beverage containers subject to this division is less than 75 percent for the 12-month reporting period from January 1, 2006, to December 31, 2006, or for any calendar year thereafter.

(b) Except as provided in subdivision (c), ~~every~~ all beverage ~~container~~ containers sold or offered for sale in this state ~~has~~ have a minimum refund value of ~~five~~ eight cents ~~($0.05)~~ ($0.08) for every two beverage containers redeemed and ~~three~~ four cents ~~($0.03)~~ ($0.04) for ~~every~~ a single or unpaired beverage container redeemed in a single transaction.

(c) Notwithstanding subdivision (b), a single or unpaired beverage container of 24 fluid ounces or larger shall have a minimum refund value of ~~five~~ eight cents ~~($0.05)~~ ($0.08).

(d)(1) The department shall periodically review the fund to ensure that there are adequate funds in the fund to pay refund values and other disbursements required by this division.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the refund values and necessary disbursements required by this division, the department shall immediately notify the Legislature of the need for urgent legislative action.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the fund as necessary, according to the procedure set forth in Section 14581, to ensure that there are adequate funds in the fund to pay the refund values and other disbursements required by this division.

(e) This section does not apply to ~~any~~ a refillable beverage container.

(f) The repeal and reenactment of this section by ~~this act enacted during the 1999-2000 Regular Session shall~~ Chapter 815 of the Statutes of 1999 does not affect any obligations or penalties imposed by this section, as it read on January 1, 1999.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14560.5. (a)(1) The invoice or other form of accounting of the transaction submitted

by a beverage distributor of soft drinks or mineral water to a dealer shall separately identify the amount of any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall not combine or include the gross wholesale price with the redemption payment but shall separately state the gross amount of the redemption payment for each type of container included in each delivery.

(2) The invoice or other form of accounting of the transaction submitted by any distributor of beer and malt beverages or wine or distilled spirit coolers to a dealer may separately identify the portion of the gross wholesale price attributable to any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction may separately state the gross amount of the redemption payment for each type of container included in each delivery. The invoice or other form of accounting of this transaction may separately identify the portion of the gross wholesale price attributable to the redemption payment.

(3) Notwithstanding Section 14541, the department shall randomly inspect beverage distributor invoices or other forms of accounting to ensure compliance with this subdivision. However, an unintentional error in addition or subtraction on an invoice or other form of accounting by a route driver of a distributor shall not be deemed a violation of this subdivision.

(4) For the purposes of this subdivision, the term, "type of container" includes the amount of the redemption payment on containers under 24 ounces and on containers 24 ounces or more.

(b) To the extent technically and economically feasible, a dealer may separately identify the amount of any redemption payment on the customer cash register receipt provided to the consumer, by the dealer, that is applied to the purchase of a beverage container.

(c)(1) A dealer shall separately identify the amount of any redemption payment imposed on a beverage container in all advertising of beverage products and on the shelf labels of the dealer's establishment. The separate identification shall be accomplished by stating one of the following:

(A) The price of the beverage product plus a descriptive term, as described in paragraph (2).

(B) The price of the beverage product plus the amount of the applicable redemption payment and a descriptive term, as described in paragraph (2).

(C) The price of the beverage product plus the amount of the applicable redemption payment, a descriptive term, as described in paragraph (2), and the total of these two amounts.

(2) For purposes of paragraph (1), the redemption payment shall be identified by one of the following descriptive terms: "California Redemption Value," "CA Redemption Value," "CRV," "California Cash Refund," "CA Cash Refund," or any other message specified in Section 14561.

(3) A dealer shall not include the redemption payment in the total price of a beverage container in any advertising or on the shelf of the dealer's establishment.

(4) This subdivision applies only to a dealer at a dealer location with a sales and storage area totaling more than 4,000 square feet.

(5) The penalties specified in Section 14591 and 14591.1 shall not be applied to a person who violates this subdivision.

(d) With regard to the sale of beer and other malt beverages or wine and distilled spirits cooler beverages, any amount of redemption payment imposed by this division is subject to Section 25509 of the Business and Professions Code.

14561. (a)~~(1)~~ A beverage manufacturer shall clearly indicate on ~~every~~ all beverage ~~container~~ containers sold or offered for sale by that beverage manufacturer in this state the message "CA Redemption ~~Value" or~~ Value," "California Redemption Value," "CA Cash Refund," "California Cash Refund," or "CA CRV," by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

~~(2) A beverage manufacturer may affix the message "CA Cash Refund," "California Cash Refund," or "CA 2.5c," if the container is less than 24 ounces, or "CA Cash Refund," "California Cash Refund," or "CA 5c," if the container is 24 ounces or more, on a beverage container sold or offered for sale by the beverage manufacturer, instead of the message specified in paragraph (1), but the message shall be affixed in the manner prescribed in paragraph (1).~~

(b) Any refillable beverage container sold or offered for sale is exempt from this section. However, any beverage manufacturer or container manufacturer may place upon, or affix to, a refillable beverage container, any message that the manufacturer determines to be appropriate relating to the refund value of the beverage container.

(c) No person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (a) that has not been labeled pursuant to this section, except for a refillable beverage container that is exempt from labeling pursuant to subdivision (b).

(d) The department may require that ~~any~~ a beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(e) ~~Any~~A beverage container labeled with the message specified in subdivision (a) shall have the minimum redemption payment established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

~~**(f)** To the extent not otherwise authorized by this section, a glass beverage container containing noncarbonated fruit drinks that contain any percentage of fruit juice, made subject to this division pursuant to Chapter 815 of the Statutes of 1999, may comply with the requirements of this section by embossing the container with the message described in paragraph (1) or (2) of subdivision (a).~~

~~**(g)** Notwithstanding any other requirement of this section, any beverage container that is included within the scope of this division on January 1, 2000, but that was not subject to this division before that date shall be exempt from the labeling requirements of this section until January 1, 2001. However, even though these beverage containers are not required to bear the~~

~~message required by this section from January 1, 2000, to January 1, 2001, inclusive, notwithstanding subdivision (c) of Section 14512, they shall be considered "empty beverage containers" for all of the purposes of this division during that period of time.~~

~~**(h)** Notwithstanding any other requirement of this section, any beverage container that is included within the scope of this division on January 1, 2001, but that was not subject to this division before that date, shall be exempt from the labeling requirements of this section until January 1, 2002. However, even though these beverage containers are not required to bear the message required by this section from January 1, 2001, to January 1, 2002, inclusive, notwithstanding subdivision (c) of Section 14512, they shall be considered "empty beverage containers" for all of the purposes of this division during that period of time.~~

(f) Until July 1, 2004, a beverage manufacturer may continue to sell or offer for sale beverage containers bearing any redemption value message permitted by this division as of January 1, 2003.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14562. The Legislature hereby finds and declares that the minimum redemption payment established by this article is a regulatory fee collected for the purpose of assuring the return for recycling of a greater percentage of the beverage containers sold in this state, and is beneficial to the beverage industry by assuring the more reliable availability of raw materials. Accordingly, the payments of redemption payments to the department for deposit in the California Beverage Container Recycling Fund are not the “proceeds of taxes,” as that term is used in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and the disbursement or encumbrance of money in the fund is not subject to the limitations imposed by that article.

CHAPTER 6. RETURNS

14570. Every dealer shall post a clear and conspicuous sign of at least 10 inches by 15 inches at each public entrance to the dealer's place of business, which specifies one of the following:

(a) The name and address, as provided by the department, of at least the certified recycling center, location, or locations, nearest to the dealer, which redeems all types of empty beverage containers at one location during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m., and the toll-free telephone number established by the department for the purpose of disseminating information regarding beverage container recycling opportunities.

(b) One of the following procedures for redeeming beverage containers is available, pursuant to Section 14571.6:

(1) Beverage containers may be redeemed at all open cash registers within this place of business.

(2) Beverage containers may be redeemed at one specific location on the dealer's premises which is identified on the sign.

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value, if any, at one location for all types of empty beverage containers and is open for business during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(b)(1) Notwithstanding subdivision (a), the department may require a certified recycling center to operate 15 of its 30 hours of operation other than during 9 a.m. to 5 p.m.

(2) Notwithstanding subdivision (a) and paragraph (1), the department may certify a recycling center that will operate less than 30 hours per week, if all of the following conditions are met:

(A) The recycling center is in a rural region. For purposes of this subparagraph, "rural region" means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with a population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

(B) The recycling center agrees to post a sign indicating the location of the nearest recycling center which is open at least 30 hours per week and which will accept all material types.

(C) The needs of the community and the goals of this division will be best served by certification of the operation as a recycling center.

(c) Before establishing operating hours for a certified recycling center pursuant to subdivision (b), the department shall make a determination that this action is necessary to

further the goals of this division and that the proposed operating hours will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types.

(d) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is "open for business" if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the refund values.

(2) In addition to the sign specified in subdivision (h), a sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(e) Except as provided in subdivision (f), for the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is "open for business" if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refund values no less than the minimums required by this division.

(f) If a recycling center consists of reverse vending machines or other automated equipment, the recycling center is "open for business" if the equipment is properly functioning, and accepting all types of empty beverage containers at one physical recycling location within the recycling location.

(g) Whenever a recycling center which is a reverse vending machine is not "open for business" during the 30 hours of operation required and posted pursuant to this section and Section 14570, the dealer which is hosting the reverse vending machine at its place of business shall redeem all empty beverage container types at all open cash registers or one designated location in the store, as specified on the sign required pursuant to subdivision (h).

(h) In addition to the sign specified in paragraph (2) of subdivision (d), each reverse vending machine shall be posted with a clear and conspicuous sign on or near the reverse vending machine which states that beverage containers may be redeemed by the host dealer if the machine is nonoperational at any time during the required 30 hours of operation, pursuant to subdivision (g). The department shall determine the size and location of the sign and the message required to be printed on the sign.

14571.1. On or before February 1, 1990, and on or before January 1, annually thereafter, the department shall, on a statewide basis, designate all convenience zones as of that date, including convenience zones in underserved areas, and shall prepare a map or maps showing these convenience zones.

14571.2. The department shall continuously assist dealers and recyclers to establish certified recycling locations within each convenience zone. This assistance includes, but is not limited to, providing

information to companies and organizations interested in operating recycling in the convenience zone; providing dealers with names of prospective recyclers for the convenience zone and providing recyclers with the names of dealers in need of a recycler for a convenience zone; providing dealers and recyclers with information on grants, advertising funds, and other resources available; and providing recyclers with advice regarding appearance and image of the recycling center and the efficient handling and transportation of recycled beverage containers.

14571.3. (a) The department shall continuously assist any certified recycler to achieve greater service to the public in an economical and cost-effective manner. This assistance shall include, but not be limited to, advice on all of the following:

(1) Methods to enhance public participation in recycling.

(2) The most beneficial location, siting, and image of a recycling location.

(3) Methods to reduce costs and optimize efficiencies of existing resources.

(b) The department shall conduct regular, unannounced inspections of certified recycling centers for the purpose of determining that the requirements of this division are satisfied. The department shall assess civil penalties pursuant to Section 14591.1 for violations at certified recycling centers.

14571.4. (a)(1) The department shall certify one operator to establish the Pacific Beach Mobile Recycling Program that incorporates all convenience zones in the Pacific Beach area of San Diego County.

(2) For the purposes of this section, "the Pacific Beach area of San Diego County" means the area designated in the Pacific Beach Community Plan.

(b) Notwithstanding Sections 14570 and 14571, all convenience zones within the Pacific Beach area of San Diego County shall be considered served if both of the following conditions are met:

(1) The recycling center operator meets all of the following conditions:

(A) The center is open for business at least once each week at a number of locations equal to the number of convenience zones in the Pacific Beach area of San Diego County as determined by the department annually, three of which are within existing convenience zones in the Pacific Beach area of San Diego County.

(B) The center is open for business at least eight hours per day at each location.

(C) The center agrees to accept, and pay the refund value for, all eligible beverage container types.

(D) The center is certified by the department for operation in the number of locations equal to the number of convenience zones in the Pacific Beach area of San Diego County, as determined by the department.

(2) All dealers within the Pacific Beach area of San Diego County post a clear and conspicuous sign of at least 10 inches by 15 inches at each public entrance to the dealer's place of business, indicating the location, hours, and day of operation for each recycling location within the Pacific Beach area.

(c) A recycling center operator approved by the department, that meets the conditions prescribed in paragraphs (1) and (2) of subdivision (b), shall be designated a certified recycling center and shall be eligible to apply for handling fees pursuant to Section 14585 and to receive from processors the amounts specified in subdivision (a) of Section 14573.5 for refund values, administrative costs, and processing payments.

(d) If the department determines that it is necessary to adopt or revise regulations to implement this section, the regulations shall be adopted or revised as emergency regulations. The Office of Administrative Law shall consider these emergency regulations to be necessary for the immediate preservation of the public peace, health, and safety, and the general welfare for the purposes of Section 11349.6 of the Government Code. Notwithstanding the 120-day period provided for in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations shall be repealed 180 days from the effective date of the regulations.

14571.6. In any convenience zone where no recycling location has been established which satisfies the requirements of Section 14571, and in any convenience zone which has exceeded the 60-day period for the establishment of a recycling center pursuant to Section 14571.7, all dealers within that zone shall, until a recycling location has been established in that zone, do one of the following:

(a) Submit to the department an affidavit form provided by the department stating that all of the following standards are being met by the dealer:

(1) The dealer redeems all empty beverage container types at all open cash registers or one designated location on the dealer's premises, during all hours that the dealer is open for business.

(2) The dealer has posted signs which meet the size and location requirements specified in subdivision (b) of Section 14570, and which conform to paragraph (2) of that subdivision.

(3) The dealer is delivering, or having delivered, all empty beverage containers received from the public to a certified recycling center or processor for recycling.

(b) Pay to the department for deposit in the fund the sum of one hundred dollars ($100) per day until a recycling location is established or until the standards for redemption specified in subdivision (a) are met.

14571.7. (a) Except as provided in subdivision (b), in any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, on or before August 1, 1990, and in any convenience zone designated after January 1, 1990, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 60 days. If, within 30 days of the notification, no recycling location has been established which satisfies the requirements of Section 14571, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location.

(b) In any convenience zone where a recycling location or locations were initially

established, but where the location or locations cease to operate in accordance with Section 14571, on or after August 1, 1990, or the convenience zone is to be established after October 1, 1990, the department shall determine, pursuant to Section 14571.8, if the convenience zone is eligible for an exemption. If the convenience zone meets all of the requirements for an exemption pursuant to 14571.8, the department shall grant one exemption. If the department determines that a convenience zone is not eligible for an exemption pursuant to subdivision (a) and Section 14571.8, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 60 days. If, within 30 days of the notification, no recycling location has been established which satisfies the requirements of Section 14571, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location.

14571.8. (a) No lease entered into by a dealer after January 1, 1987, may contain a leasehold restriction that prohibits or results in the prohibition of the establishment of a recycling location.

(b) The director may grant an exemption to the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption. After evaluation of the testimony and any field review conducted, the department shall base a decision to exempt a convenience zone on one, or any combination, of the following factors:

(1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types.

(2) Except as provided in paragraph (5), the nearest certified recycling center is within a reasonable distance of the convenience zone being considered from exemption.

(3) The convenience zone is in the area of a curbside recycling program that meets the criteria specified in Section 14509.5.

(4) The requirements of Section 14571 cannot be met in a particular convenience zone due to local zoning or the dealer's leasehold restrictions for leases in effect on January 1, 1987, and the local zoning or leasehold restrictions are not within the authority of the department and the dealer. However, any lease executed after January 1, 1987, shall meet the requirements specified in subdivision (a).

(5) The convenience zone has redeemed less than 60,000 containers per month for the prior 12 months and, notwithstanding paragraph (2), a certified recycling center is located within one mile of the convenience zone that is the subject of the exemption.

(c) The department shall review each convenience zone in which a certified recycling center was not located on January 1, 1996, to determine the eligibility of the convenience zone under the exemption criteria specified in subdivision (b).

(d) The total number of exemptions granted by the director under this section

shall not exceed 35 percent of the total number of convenience zones identified pursuant to this section.

(e) The department may, on its own motion, or upon petition by any interested person, revoke a convenience zone exemption if either of the following occurs:

(1) The condition or conditions that caused the convenience zone to be exempt no longer exists, and the department determines that the criteria for an exemption specified in this section, are not presently applicable to the convenience zone.

(2) The department determines that the convenience zone exemption was granted due to an administrative error.

(f) If an exemption is revoked and a recycling center is not certified and operational in the convenience zone, the department shall, within 10 days of the date of the decision to revoke, serve all dealers in the convenience zone with the notice specified in subdivision (a) of Section 14571.7.

(g) An exemption shall not be revoked when a recycling center becomes certified and operational within an exempt convenience zone unless either of the events specified in paragraphs (1) and (2) of subdivision (e) occurs.

14572. (a) Except as provided in subdivision (b), a certified recycling center shall accept from any consumer or dropoff or collection program any empty beverage container, and shall pay to the consumer or dropoff or collection program the refund value of the beverage container. The center may pay the refund value based on the weight of returned containers.

(b) Any recycling center or processor which was in existence on January 1, 1986, and which refused, as of January 1, 1986, to accept at a particular location a certain type of empty beverage container may continue to refuse to accept at the location the type or types of empty beverage containers that the recycling center or processor refused to accept as of January 1, 1986. Any certified recycling center which refuses, pursuant to this subdivision, to accept a certain type or types of empty beverage containers is not eligible to receive handling fees unless the center agrees to accept all types of empty beverage containers and is a supermarket site. This subdivision does not preclude the certified recycling center from receiving a handling fee for beverage containers redeemed at supermarket sites which do accept all types of containers.

(c) The department shall develop procedures by which recycling centers and processors which meet the criteria of subdivision (b) may recertify to change the material types accepted.

(d)(1) Only a certified recycling center may pay the refund value to consumers or dropoff or collection programs. No person shall pay a noncertified recycler for empty beverage containers an amount which exceeds the current scrap value for each container type, which shall be determined in the following manner:

(A) For a plastic or glass beverage container, the current scrap value shall be determined by the department.

(B) For an aluminum beverage container, the current scrap value shall be not greater than the amount paid to the processor for that aluminum beverage container, on the date the container was purchased, by the

location of end use, as defined in the regulations of the department.

(2) No person may receive or retain, for empty beverage containers which come from out of state, any refund values, processing payments, or administrative fees for which a claim is made to the department against the fund.

(3) Paragraph (1) does not affect curbside programs under contract with cities or counties.

14572.5. A certified recycling center, other than a reverse vending machine, shall accept from any consumer or any dropoff or collection program and pay the applicable deposit for any refillable empty beer and other malt beverage container. The certified recycling center shall return, or cause to be returned, the refillable beer and other malt beverage container to the beer and other malt beverage distributor or any willing purchaser, who shall then pay the deposit to the center. The beer and other malt beverage distributor or other purchaser shall also negotiate a handling fee with the recycling center for the return of these containers.

14573. (a) The department shall pay to a processor, for every empty beverage container received by the processor from a certified recycling center, curbside program, or dropoff or collection program, upon presentation of a completed processor invoice accompanied by a shipping report from the supplier of the material, in the form adopted by the department, the sum of all of the following amounts:

(1) The refund value.

(2) Two and one-half percent of the refund value for administrative costs.

(3) The processing payment established pursuant to Section 14575.

(b) The department shall make the payment required in subdivision (a) within two working days of the date that the department is notified of the delivery or within the time determined by the department to be necessary and adequate. If the payment is not made by the Controller to the certified processor within 20 working days of receipt of the claims schedule, the Controller shall pay the processor interest at the current prime lending rate for any period in excess of these 20 working days.

14573.5. (a) Except as provided in Section 14573.6, a processor shall pay to a certified recycling center, dropoff or collection program, or curbside program, for all types of empty beverage containers, by type of beverage container, received by the processor from a recycling center, curbside program, or dropoff or collection program, upon receipt by the certified processor of a shipping report from the supplier of the material, in the form adopted by the regulations adopted by the department, the sum of all of the following amounts:

(1) The refund value.

(2) Three-fourths of 1 percent of the refund value for administrative costs.

(3) The processing payment established pursuant to Section 14575.

(b) The processor shall make the payment required in subdivision (a) within two working days of the date that the processor receives these empty beverage containers, or within the time which the department determines to be necessary and adequate. Under the procedures authorized

by the department, the department may authorize a certified recycling center to cancel containers, and a certified processor may authorize a certified recycling center to cancel containers on behalf of the certified processor.

(c) If the department has set up an accounts receivable procedure or other procedure for seeking the payment of money improperly obtained by a certified recycling center from the fund, the department may reimburse the processor for its payments to that certified recycling center.

14573.51. (a) Notwithstanding any other provision of this division, recycling centers and processors shall not pay curbside programs more than the applicable statewide average curbside commingled rate unless the curbside program has received an individual commingled rate from the department pursuant to subdivision (b).

(b) The department ~~shall~~ may establish a procedure whereby the operators of curbside programs may apply for an individual commingled rate for any material or types with or without a statewide commingled rate, including, but not limited to, glass, aluminum, bimetal, or any of the individual plastic resin types or combination of resin types identified by resin identification codes under Section 18015. These procedures shall require, at a minimum, all of the following:

(1) The individual rate shall be valid for no more than one year from the date the individual rate is authorized.

(2) The methodology used by the operator of the curbside program to determine the commingled rate shall be approved by the department, in advance.

(c) Curbside programs ~~which~~ that have acquired an individual commingled rate, pursuant to this section, shall not be surveyed by the department to determine the statewide average curbside commingled rate during the period the individual commingled rate is effective.

(d) The department may enter into a contract for the services required to implement the amendments to this section made by the act of the first half of the 2003-04 Regular Session of the Legislature amending this section. The department may not expend more than two hundred fifty thousand dollars ($250,000) for each year of the contract. The contract shall be paid only from revenues derived from redemption payments and processing fees paid on plastic beverage containers displaying the resin identification code "3," "4," "5," "6," or "7" pursuant to Section 18015. If the department determines that insufficient funds will be available from these revenues, after refund values are paid to processors and the reduction is made in the processing fee pursuant to subdivision (f) of Section 14575 for these containers, the department may determine not to calculate a commingled rate pursuant to subdivision (b).

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14573.6. No dropoff or collection program shall pay any refund value to the consumer, and a dropoff or collection program is not eligible to receive any sum paid pursuant to Section 14573 or 14573.5 for administrative costs.

14573.7. Notwithstanding Sections 14573 and 14573.5, the department may require a recycling center, pursuant to a prepayment review taken pursuant to

subdivision (a) of Section 14552, to submit consumer transaction logs and consumer transaction receipts as support documentation for shipping reports submitted to processors. The department may, pursuant to this section, authorize a processor to withhold refund value payments to a recycling center. The department may suspend the certification of a recycling center without a hearing if the recycling center fails to comply with the documental submittal requirements of this section, upon providing notice of these requirements. The recycling center which is the subject of the suspension may then request a hearing on the suspension, but the request for a hearing shall not stay the suspension. A hearing requested pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

14574. (a) A distributor of beverage containers shall pay to the department the redemption payment for every beverage container, other than a refillable beverage container, sold or transferred to a dealer, less one percent for the distributor's administrative costs.

(1) Except as provided in paragraph (2), the payment shall be made within 40 days of any sale, or in the form and manner which the department may prescribe.

(2) The payment made by a distributor of beer and other malt beverages shall be made not later than the last day of the third month following the sale.

(b)(1) Notwithstanding subdivision (a), a distributor may, upon the approval of the department, elect to make a single annual payment of redemption payments, if the distributor's projected redemption payment for a calendar year totals less than ten thousand dollars ($10,000).

(2) An annual redemption payment made pursuant to this subdivision is due and payable on or before February 1 for every beverage container sold or transferred by the distributor to a dealer in the previous calendar year.

(3) A distributor shall notify the department of its intent to make an annual redemption payment pursuant to this subdivision on or before January 31 of the calendar year preceding the year in which the payment will be due.

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the cost of recycling, the department shall, on January 1, 2000, and on or before January 1 annually thereafter, establish a processing fee and a processing payment for the container, by the type of the material of the container.

(b) The processing payment shall be at least equal to the difference between the scrap value offered to a statistically significant sample of recyclers by willing purchasers, and except for the initial calculation made pursuant to subdivision (d), the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding centers receiving a handling fee, of receiving, handling, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, the actual cost of disposal, calculated pursuant to subdivision (c). The department shall determine the statewide weighted average cost to recycle each beverage container type, which shall serve as the actual recycling

costs for purposes of paragraphs ~~(3)~~(2) and ~~(4)~~(3) of subdivision (c), by conducting a survey of the costs of a statistically significant sample of certified recycling centers, excluding those recycling centers receiving a handling fee, for receiving, handling, storing, transporting, and maintaining equipment.

(2) A reasonable financial return for recycling centers.

(c) The department shall base the processing payment pursuant to this section upon all of the following:

(1) ~~Except as specified in paragraph (2), the~~ The department shall use the average scrap values paid to recyclers between October 1, ~~1998~~ 2001, and September 30, ~~1999~~ 2002, for the ~~initial~~ 2003 calculation and the same 12-month period directly preceding the year in which the processing fee is calculated for any subsequent calculation.

~~**(2)** For material types not included in the program on January 1, 1999, the department shall estimate the scrap value for the initial calculation based on a sample of average scrap values paid to recyclers between July 1, 1999, and September 30, 1999.~~

~~**(3)** Except as specified in subdivision (d), the department shall use the actual recycling costs for certified recycling centers, as determined pursuant to paragraph (1) of subdivision (b) by the department on or before January 1, 2000, for the initial calculation.~~

~~**(4)** The department shall make all subsequent determinations of the actual costs for certified recycling centers, pursuant to paragraph (1) of subdivision (b), on or before January 1, 2001, and every third year thereafter.~~

(2) To calculate the 2003 processing payments, the department shall use the recycling costs for certified recycling centers used to calculate the January 1, 2002, processing payments.

(3) For calculating processing payments that will be in effect on and after January 1, 2004, the department shall determine the actual costs for certified recycling centers, every second year, pursuant to paragraph (1) of subdivision (b). The department shall adjust the recycling costs annually to reflect changes in the cost of living, as measured by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency of the United States government.

~~**(d)** Except as provided in subparagraph (B) of paragraph (4), the department shall use the following cost data for certified recycling centers for the January 1, 2000, calculation:~~

~~**(1)** Eighty-five dollars and nineteen cents ($85.19) for each ton of glass containers.~~

~~**(2)** Four hundred seventeen dollars and ninety-six cents ($417.96) for each ton of bimetal containers.~~

~~**(3)** Six hundred forty-two dollars and sixty-nine cents ($642.69) for each ton of PET plastic containers.~~

~~**(4) (A)** Six hundred forty-two dollars and sixty-nine cents ($642.69) for each ton of non-PET plastic containers.~~

~~**(B)** Notwithstanding this subdivision, in calculating the January 1, 2001, processing payment for non-PET plastic containers, the~~

~~department shall also use the same cost data specified in subparagraph (A).~~

(d) Notwithstanding paragraph (1) of subdivision (b) and subdivision (c), for the purpose of setting the cost for recycling non-PET plastic containers by certified recycling centers to determine the processing payment for those containers, the department shall use a recycling cost of six hundred forty-two dollars and sixty-nine cents ($642.69) per ton for the January 1, 2002, calculation of the processing payment.

(e) Except as specified in subdivision (f), the actual processing fee paid by a beverage ~~manufacturers~~ manufacturer shall equal 65 percent of the processing payment calculated pursuant to subdivision (b).

~~**(f)** The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers pursuant to subdivision (e) by expending funds in each material processing fee account, established pursuant to subparagraph (A) of paragraph (6) of subdivision (a) of Section 14581, so that the amount of the processing fee equals 25 percent of the processing payment calculated pursuant to subdivision (b).~~

(f) The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers by expending funds in each material processing fee account, in the following manner:

(1) The processing fee in effect on January 1, 2004, shall be equal the following amounts:

(A) For a container type that was subject to this division on January 1, 1999, 12 percent of the processing payment if the recycling rate of that container type was equal to, or greater than, 60 percent for the 1999 calendar year.

(B) For a container type that was not subject to this division on January 1, 1999, 12 percent of the processing payment, if the recycling rate of that container type was equal to, or greater than, 60 percent for the 2001 calendar year.

(C) For a container type that was not subject to this division on January 1, 1999, 15 percent of the processing payment if the recycling rate for that container type was equal to, or greater than, 45 percent, but less than 60 percent for the 2001 calendar year.

(D) For a container type that was not subject to this division on January 1, 1999, 20 percent of the processing payment if the recycling rate for that container type was equal to, or greater than, 30 percent, but less than 45 percent, for the 2001 calendar year.

(2) On January 1, 2005, and annually thereafter, the processing fee shall equal the following amounts:

(A) Ten percent of the processing payment for a container type with a recycling rate equal to or greater than 75 percent.

(B) Eleven percent of the processing payment for a container type with a recycling rate equal to or greater than 65 percent, but less than 75 percent.

(C) Twelve percent of the processing payment for a container type with a recycling rate equal to or greater than 60 percent, but less than 65 percent.

(D) Thirteen percent of the processing payment for a container type with a

recycling rate equal to or greater than 55 percent, but less than 60 percent.

(E) Fourteen percent of the processing payment for a container type with a recycling rate equal to or greater than 50 percent, but less than 55 percent.

(F) Fifteen percent of the processing payment for a container type with a recycling rate equal to or greater than 45 percent, but less than 50 percent.

(G) Eighteen percent of the processing payment for a container type with a recycling rate equal to or greater than 40 percent, but less than 45 percent.

(H) Twenty percent of the processing payment for a container type with a recycling rate equal to or greater than 30 percent, but less than 40 percent.

(I) Sixty-five percent of the processing payment for a container type with a recycling rate less than 30 percent.

(3) The department shall calculate the recycling rate for purposes of paragraph (2) based on the 12-month period ending on June 30 that directly precedes the date of the January 1 processing fee determination.

~~**(g)** Prior to January 1, 2001, the department may adjust a processing fee established pursuant to this section for any plastic beverage container, if both of the following occur:~~

~~**(1)** The department determines that the average statewide scrap values paid by willing purchasers for that beverage container materials type are less than the average scrap values used as the basis for the processing fee calculation.~~

~~**(2)** The department determines that adjusting the processing fee is necessary to further the objectives of this division.~~

(g) Not more than once every three months, the department may make an adjustment in the amount of the processing payment established pursuant to this section notwithstanding any change in the amount of the processing fee established pursuant to this section, for any beverage container, if the department makes the following determinations:

(1) The statewide scrap value paid by processors for the material type for the most recent available 12-month period directly preceding the quarter in which the processing payment is to be adjusted is 5 percent more or 5 percent less than the average scrap value used as the basis for the processing payment currently in effect.

(2) Funds are available in the processing fee account for the material type.

(3) Adjusting the processing payment is necessary to further the objectives of this division.

(h)(1) Except as provided in paragraphs (2) and (3), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2)(A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages manufactured outside the state, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section

23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering ~~or~~ for sale of that beverage brand within the state.

(B) The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3)(A) Notwithstanding paragraph (1), a beverage manufacturer may, upon the approval of the department, elect to make a single annual payment of processing fees, if the beverage manufacturer's projected processing fees for a calendar year total less than one thousand dollars ($1,000).

(B) An annual processing fee payment made pursuant to this paragraph is due and payable on or before February 1 for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year.

(C) A beverage manufacturer shall notify the department of its intent to make an annual processing fee payment pursuant to this paragraph on or before January 31 of the calendar year preceding the year in which the payment will be due.

(4) The department shall pay the processing payments on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The processor shall pay the recycling center the entire processing payment representing the actual cost and financial return incurred by the recycling center, as specified in subdivision ~~(a)~~(b).

(i) When assessing processing fees pursuant to subdivision (a), the department shall assess the processing fee on each container sold, as provided in ~~subdivision~~ subdivisions (e) and (f), by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled.

(j) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee.

~~**(k)** The department shall annually, on or before January 1, determine the statewide average scrap values paid to recyclers by processors for beverage containers during the 12-month period ending September 30. If the department determines that the statewide average scrap values paid for glass containers is 10 percent or more above or below the previous year's scrap value, the department shall adjust the processing payment to equal the difference between the cost of recycling and the new statewide average scrap value.~~

(k) If, at the end of any calendar year for which glass recycling rates equal or exceed

45 percent and sufficient surplus funds remain in the glass processing fee account to make the reduction pursuant to this subdivision or if, at the end of any calendar year for which PET recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the PET processing fee account to make the reduction pursuant to this subdivision, the department shall use these surplus funds in the respective processing fee accounts in the following calendar year to reduce the amount of the processing fee that would otherwise be due from glass or PET beverage manufacturers pursuant to this subdivision.

(1) The department shall reduce the glass or PET processing fee amount pursuant to this subdivision in addition to any reduction for which the glass or PET beverage container qualifies under subdivision (f).

(2) The department shall determine the processing fee reduction by dividing two million dollars ($2,000,000) from each processing fee account by an estimate of the number of containers sold or transferred to a distributor during the previous calendar year, based upon the latest available data.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14575.1. ~~**(a)** Notwithstanding subdivision (d) of Section 14575, if a willing purchaser offers to purchase empty PET containers at a voluntary artificial scrap value that, when combined with payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, is equal to, or more than, the recycling cost for empty PET containers, as determined in subdivision (d) of Section 14575, no processing fee shall be imposed on PET containers pursuant to Section 14575.~~

(a) Notwithstanding subdivision (b) of Section 14575, if a willing purchaser offers to purchase empty PET containers at a voluntary artificial scrap value that is equal to the processing fee reduced pursuant to subdivision (f) of Section 14575 when applied to all containers sold, no processing fee shall be imposed on PET containers pursuant to Section 14575.

(b) If a willing purchaser offers to pay a voluntary artificial scrap value, the department shall, on a monthly basis, determine whether the sum of the voluntary artificial scrap value and payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, are equal to, or more than, the recycling cost for empty PET containers determined pursuant to subdivision (d) of Section 14575.

(c) If the department determines that, for any monthly period, the sum of the voluntary artificial scrap value and payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, is less than the recycling cost for empty PET containers, determined pursuant to ~~subdivision (d) of~~ Section 14575, the following requirements shall apply:

(1) The department shall immediately provide written notification of the deficiency for that monthly period and the amount of that deficiency to any willing purchaser.

(2) A willing purchaser shall correct the deficiency in the next monthly period by adjusting the voluntary artificial scrap value by an amount sufficient to equal the recycling cost for empty PET containers plus the previous monthly period's deficiency.

(3) If the deficiency and amount in arrears is not corrected within 30 days of providing written notice to willing purchasers of empty PET containers, the department shall impose a processing fee pursuant to Section 14575 which includes any amount necessary, including any amount in arrears, to cover the cost of recycling empty PET containers.

(d) If the department determines that, for any monthly period, the sum of the voluntary artificial scrap value and payments made from the PET Processing Fee Account pursuant to subdivision (f) of Section 14575, is greater than the recycling cost for empty PET containers, the department shall do both of the following:

(1) Immediately provide written notification of the deviation for that monthly period and the amount of that deviation to any willing purchaser.

(2) Provide a credit equal to the amount of the deviation for any future monthly period wherein the voluntary artificial scrap value, and payments made from the PET Processing Fee Account, are less than the recycling cost of empty PET containers determined pursuant to subdivision (d) of Section 14575.

(e) Nothing in this section is intended to affect any ~~pending~~ litigation that was pending on January 1, 1996, in which the department is a party of record.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14575.2. (a) In order to ensure that only those funds necessary to cover the net cost of recycling each beverage container sold are paid by beverage manufacturers, the department shall establish a processing fee rebate for all beverage containers for which a processing fee was paid on containers sold between January 1, 2002, and December 31, 2003. The amount of the rebate for each container shall be equal to the difference between the processing fee established and paid pursuant to Section 14575 as it read on January 1, 2003, and the processing fee established pursuant to paragraph (1) of subdivision (f) of Section 14575 as it reads on the effective date of the act adding this section.

(b) Consistent with Section 14581, and subject to the availability of funds, the department shall pay a processing fee rebate to beverage manufacturers on all beverage containers sold between January 1, 2002, and December 31, 2003, for which the beverage manufacturer paid a processing fee as determined by the department.

(c) The department shall pay the processing fee rebate in a form and manner as it determines.

(d) The department may not pay the processing fee rebate before July 1, 2004, or after June 30, 2006.

(e) The department may deduct from the processing fee rebate any amount owed to the department by the beverage manufacturer.

(f) It is the intent of the Legislature that the department undertake those actions that are in compliance with this chapter and that reduce processing fees paid by beverage manufacturers consistent with this section prior to the effective date of the act adding this subdivision.

(Added by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14575.5. (a) The department shall establish a supplemental processing payment

to be paid to a processor. The processor shall pay the entire supplemental processing payment to a recycler that receives processing payments pursuant to Section 14575. The department shall determine the supplemental processing payment based on the volume of redeemed containers that the recycler reports for each whole month pursuant to subdivision (b), commencing on July 1, 2004, and continuing for a period of 12 consecutive months.

(1) Consistent with Section 14581 and subject to the availability of funds, the department shall establish a supplemental processing payment for glass, PET plastic containers, and HDPE plastic containers as follows:

(A) Forty dollars and eighty-six cents ($40.86) for each ton of glass beverage containers.

(B) One hundred eighty-two dollars and fifty-four cents ($182.54) for each ton of PET plastic beverage containers.

(C) Two hundred twenty-eight dollars and seventy-five cents ($228.75) for each ton of HDPE plastic beverage containers.

(2) The department may not make a supplemental processing payment to a recycler for any volume reported for a whole month that is not within the 12-month consecutive time period established in subdivision (a).

(b) A recycler shall report to a processor the volume of redeemed containers subject to the supplemental processing payments established pursuant to paragraph (1) of subdivision (a) no later than the 10th day following the end of the 12-month period established in subdivision (a).

(c) The department shall pay the supplemental processing payments on eligible redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5, except that paragraph (2) of subdivision (a) of Section 14573.5 is not applicable. The processor shall pay a recycler the entire supplemental processing payment as specified in subdivision (a).

(Added by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14576. (a) From January 1, 2004, to December 31, 2006, inclusive, the department shall establish a pilot program using supermarket sites that use both reverse vending machines and staffed recycling centers to determine whether or not these recycling centers increase recycling rates and provide greater convenience and ease of use for consumers.

(b) The pilot program shall comply with all of the following criteria:

(1) The program shall consist of not more than 50 supermarket sites that represent a valid statistical sampling of the state, as determined by the department.

(2) Each dealer where the supermarket site is located certifies to the department in writing that it has authorized the recycling center to participate in the pilot program.

(3) Each supermarket site in the pilot program has at least two reverse vending machines that accept all types of beverage containers, except those beverage containers that are labeled with a "2," as specified in subdivision (a) of Section 18015 and are larger than three liters.

(4) The department authorizes each supermarket site, which has redeemed, as determined by the department, a monthly average volume of no less than 60,000 empty beverage containers, and no more than 150,000 empty beverage containers for the months between July 1, 2002, and June 30, 2003, inclusive.

(c) Each supermarket site participating in the pilot program shall comply with all of the following requirements:

(1) The supermarket site is inspected by the operator that participates in the pilot program at least once each day to maintain and empty the machines and ensure that the site is kept clean.

(2) The operator of the supermarket site submits monthly service records to the department within 10 days of the end of each month, showing the number of complaints per site, if any, and the response time for each service call.

(3)(A) The supermarket site is operational at least 95 percent of operable time.

(B) For purposes of this paragraph, "operable time" means the actual operating hours the supermarket site is required to be open for business each month. A supermarket site's operating hours shall be determined consistent with the supermarket's operational hours, subject to applicable curfew requirements imposed by local ordinance.

(4) The reverse vending machine at the supermarket site is not inoperative more than one day a month, and if that breakdown rate is exceeded, the supermarket site replaces the reverse vending machine within three business days.

(5) The operator of the supermarket site repairs a reverse vending machine within five business hours of receiving a complaint by a consumer, the dealer, or the department that the recycling center is not operational during operable time.

(6) The supermarket site provides a receptacle adjacent to the reverse vending machine for beverage containers that are labeled with a "2," as specified in subdivision (a) of Section 18015, and that are larger than three liters. The operator shall post a sign on the receptacle indicating the hours of staffed operation in which a consumer may return the container to the site and receive a redemption payment.

(7) The operator of the supermarket site has an attendant present at the supermarket site a minimum of 20 hours per week, including no fewer than three hours on a Saturday or a Sunday between the hours of 9 a.m. and 5 p.m. and no fewer than three evening hours between the hours of 5 p.m. and 9 p.m. during one weekday evening.

(8) The operator of the supermarket site provides instructions for use of the reverse vending machine at the supermarket site in appropriate languages and in pictorial representations demonstrating how to use the reverse vending machine.

(9) The operator of the supermarket site maintains a toll-free telephone number attended by a live operator during operable time to answer calls from any person regarding the performance of its reverse vending machine.

(10) The operator of the supermarket site posts information identifying the location of, and directions to, the nearest certified recycling center that is open for business at

least 30 hours per week and accepts all material types.

(d) If the department determines that the total volume of beverage containers redeemed at a supermarket site authorized to participate in the pilot program decreases by more than 10 percent from the volume reported for the prior year, the supermarket site shall be staffed for at least 30 hours per week.

(e)(1) The department shall monitor the volume of beverage containers redeemed at each supermarket site participating in the pilot program at least once every three-month period.

(2) The department shall conduct an annual review of each supermarket site participating in the pilot program to determine overall performance and make operational adjustments.

(3) The department shall disqualify an individual site from participation in the pilot program, effective within seven calendar days of notice provided to the operator, upon a determination that the continued operation of the supermarket site within the pilot program does not further the goals of the division.

(4) The department shall, upon the written request of the dealer at the supermarket site and within seven calendar days of the request made by the dealer to the department, disqualify the operator from further participation in the pilot program at that supermarket site.

(f) The department may adopt emergency regulations to implement this section. 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.

(g) Notwithstanding Sections 14570 and 14571, a supermarket site that consists of reverse vending machines is "open for business" within the meaning of this section if the supermarket site is approved by the department to participate in the pilot program pursuant to paragraph (4) of subdivision (b) and the supermarket site complies with the operating requirements specified in subdivision (c).

(h) On or before July 1, 2006, the department shall report to the Governor and Legislature on the effectiveness of the pilot program and make recommendations on whether the program should be continued, expanded, or modified to ensure compliance with this division.

(i) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

(Added by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

CHAPTER 7. FINANCIAL PROVISIONS

14580. (a) Except as provided in subdivision (d), the department shall deposit all amounts paid as redemption payments by distributors pursuant to Section 14574, and all other revenues received into the California Beverage Container Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to the department for expenditure without regard to fiscal year for the following purposes:

(1) The payment of refund values and administrative fees to processors pursuant to Section 14573.

(2) For a reserve for contingencies, which shall not be greater than an amount equal to 5 percent of the total amount paid to processors pursuant to Section 14573 during the preceding calendar year, plus any interest earned on that amount.

(b) Except as provided in Section 14580.5, the money in the fund may be expended by the department for the administration of this division only upon appropriation by the Legislature in the annual Budget Act.

(c) After setting aside funds estimated to be needed for expenditures authorized pursuant to this section, the department shall set aside funds on a quarterly basis for the purposes specified in Section 14581. Notwithstanding Section 13340 of the Government Code, that money is hereby continuously appropriated to the department, without regard to fiscal year, for the purposes specified in Section 14581.

(d) The department shall deposit all civil penalties or fines collected pursuant to this division into the Penalty Account, which is hereby created in the fund. The money in the Penalty Account may be expended by the department only upon appropriation by the Legislature, for purposes of this division.

14580.5. (a) Notwithstanding any appropriation made in the Annual Budget Act, the department may only expend an amount for the administration of this division which is five percent less than the amount appropriated for the administration of this division for the 1995-96 fiscal year.

(b) It is the intent of the Legislature that for each fiscal year, through the 1998-99 fiscal year, the amount appropriated in the Annual Budget Act for the administration of this division shall be reduced by six and two-thirds percent of the amount appropriated in the prior fiscal year.

(c) It is the further intent of the Legislature that revenues that otherwise would have been spent by the department for administration of this division shall be expended for the purposes set forth in Section 14581.

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the money set aside in the fund, pursuant to subdivision (c) of Section 14580 for the purposes of this section:

(1) ~~Twenty-three~~ On and after July 1, 2002, twenty-six million five hundred thousand dollars ~~($23,500,000)~~ ($26,500,000) shall be expended annually for the payment of handling fees required pursuant to Section 14585.

(2) Fifteen million dollars ($15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3)(A) Fifteen million dollars ($15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4)(A) Ten million five hundred thousand dollars ($10,500,000) may be expended annually for payments of five thousand dollars ($5,000) to cities and ten thousand dollars ($10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the

population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5)(A) ~~Five~~ One million five hundred thousand dollars ~~($500,000)~~ ($1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(B) Up to a total of six million eight hundred forty thousand dollars ($6,840,000) shall be paid to the City of San Diego, between January 1, 2000, and January 1, 2004, for a curbside recycling program conducted pursuant to Section 14549.7.

(6)(A) The department shall expend the amount necessary to pay the processing payment and supplemental processing payment established pursuant to ~~subdivision (b) of Section 14575~~ Sections 14575 and 14575.5 and pay processing fee rebates pursuant to Section 14575.2. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee is calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1, into which account shall be deposited ~~both~~ all of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to ~~subdivision (g) of~~ Section 14575.

(ii) Funds equal to ~~pay 75 percent of~~ the difference between the amount in subparagraph (i) and the amount of the processing payments established in subdivision (b) of Section 14575, ~~in order~~ and adjusted pursuant to paragraphs (2) and (3) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575, or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(iii) Funds equal to an amount sufficient to pay the total amount of the supplemental processing payments established pursuant to Section 14575.5.

(B) Notwithstanding Section 13340 of the Government Code, the money in each processing fee account is hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments and supplemental processing payments, and reducing processing fees, pursuant to Sections 14575 and 14575.5 and paying processing fee rebates pursuant to Section ~~14575~~ 14575.2.

(7) ~~(A)~~ Up to ~~ten~~ five million dollars ~~($10,000,000) shall be~~ ($5,000,000) may be annually expended by the department ~~between January 1, 2000, and January 1, 2002,~~ for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

~~**(B)** On or before July 1, 2002, the department shall provide a report to the Legislature on the impact of the statewide public education and information campaign and make recommendations for any future campaigns.~~

(8) Up to three million dollars ($3,000,000) shall be expended annually for the payment of quality glass incentive payments pursuant to Section 14549.1.

(9)(A) Three hundred thousand dollars ($300,000) shall be expended annually by the department, until January 1, ~~2003~~2005, pursuant to a cooperative agreement entered into between the department and Keep California Beautiful, a nonprofit 501(c)(3) organization chartered by the State of California in 1990, for the purpose of conducting statewide public education campaigns aimed at preventing and cleaning up beverage containers and related litter. The campaigns shall include, but not be limited to, coordination of Keep California Beautiful month.

(B) Prior to making an expenditure pursuant to this paragraph, the department shall enter into a cooperative agreement with Keep California Beautiful.

(C) As part of the cooperative agreement, Keep California Beautiful shall provide the department with an annual campaign plan and budget, and a report of previous year campaign activities.

~~**(D)** On or before July 1, 2002, the department shall make a recommendation to the Legislature on future funding for beverage container litter prevention and cleanup activities by Keep California Beautiful.~~

(10) Up to ten million dollars ($10,000,000) may be expended annually by the department, until January 1, 2007, to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.

(C) Research and development for products manufactured using recycled beverage containers.

(D) Payments to California manufacturers who recycle beverage containers that are marked by resin type identification codes "3," "4," "5," "6," or "7," pursuant to Section 18015.

(11) Up to ten million dollars ($10,000,000) may be transferred on a one-time basis by the department to the Recycling Infrastructure Loan Guarantee Account, for expenditure pursuant to Section 14582.

(b) The fifteen million dollars ($15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c)(1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this

section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14582. The Recycling Infrastructure Loan Guarantee Account is hereby created as a revolving account in the California Beverage Container Recycling Fund, and the funds in that account are continuously appropriated to the department to issue loan guarantees for capital expenditures for new recycling infrastructure located in the state. The department may issue a loan guarantee from the account only if the department determines that the new recycling infrastructure adds recycling capacity, results in remanufacturing and reuse of beverage containers into new products, and complies with all applicable laws and regulations.

(Added by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14584. (a) Operators of reverse vending machines or processors may apply to the California Pollution Control Financing Authority for financing pursuant to Section 44526 of the Health and Safety Code, as a means of obtaining capital for establishment of a convenience network. For purposes of Section 44508 of the Health and Safety Code, "project" includes the establishing of a recycling location pursuant to the division.

(b) Corporations, companies, or individuals may apply for loan and grant funds from the Energy Technologies Research, Development, and Demonstration Account specified in Section 25683 by applying to the State Energy Resources Conservation and Development Commission for the purpose of demonstrating equipment for enhancing recycling opportunities.

14585. (a) The department shall adopt guidelines and methods for paying handling fees to supermarket sites, nonprofit convenience zone recyclers, or rural region recyclers to provide an incentive for the redemption of empty beverage containers in convenience zones. The guidelines shall include, but not be limited to, all of the following:

(1) Handling fees shall be paid on a monthly basis, in the form and manner adopted by the department. The department shall require that claims for the handling fee be filed with the department not later than the first day of the second month following

the month for which the handling fee is claimed as a condition of receiving any handling fee.

(2) To be eligible for any handling fee, a supermarket site recycling center, nonprofit convenience zone recycler, or rural region recycler shall redeem not less than 60,000 beverage containers, ~~and, except for operators of certified recycling centers that are nonprofit organizations, not more than 500,000 beverage containers,~~ during the calendar month in which the handling fee is claimed or have redeemed not less than an average of 60,000 beverage containers per month during the previous 12 months.

(3) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of determining the eligibility percentage, any handling fee calculations, and payments.

(4) The department shall determine the number of eligible containers per site for which a handling fee will be paid in the following manner:

(A) Each eligible site's combined monthly volume of glass and plastic beverage containers shall be divided by the site's total monthly volume of all empty beverage container types.

(B) If the quotient determined pursuant to subparagraph (A) is equal to, or more than, 10 percent, the total monthly volume of the site shall be the maximum volume which is eligible for a handling fee for that month.

(C) If the quotient determined pursuant to subparagraph (A) is less than 10 percent, the department shall divide the volume of glass and plastic beverage containers by 10 percent. That quotient shall be the maximum volume that is eligible for a handling fee for that month.

(5) The department shall pay a handling fee of 1.8 cents ($0.018) per eligible beverage container, as determined pursuant to paragraph (4).

(6) Notwithstanding paragraph (5), the total handling fee payment to a supermarket site, nonprofit convenience zone recycler, or rural region recycler shall not exceed two thousand three hundred dollars ($2,300) per month.

(7) If the eligible volume in any given month would result in handling fee payments which exceed the allocation of funds for that month, as provided in subdivision (b), sites with higher eligible monthly volumes shall receive handling fees for their entire eligible monthly volume before sites with lower eligible monthly volumes receive any handling fees.

(8)(A) If a dealer where a supermarket site, nonprofit convenience zone recycler, or rural region recycler is located ceases operation for remodeling or for a change of ownership, the operator of that supermarket site nonprofit convenience zone recycler, or rural region recycler shall be eligible to apply for handling fees for that site for a period of three months following the date of the closure of the dealer.

(B) Every supermarket site operator, nonprofit convenience zone recycler, or rural region recycler shall promptly notify the department of the closure of the dealer where the supermarket site, nonprofit convenience zone recycler, or rural region recycler is located.

(C) Notwithstanding subparagraph (A), any operator who fails to provide

notification to the department pursuant to subparagraph (B) shall not be eligible to apply for handling fees.

(b) The department may allocate the ~~twenty-three million five hundred thousand dollars ($23,500,000)~~ amount authorized for expenditure for the payment of handling fees pursuant to paragraph (1) of subdivision (a) of Section 14581 on a monthly basis and may carry over any unexpended monthly allocation to a subsequent month or months. However, unexpended monthly allocations shall not be carried over to a subsequent fiscal year for the purpose of paying handling fees but may be carried over for any other purpose pursuant to Section 14581.

(c)(1) The department shall not make handling fee payments to more than one certified recycling center in a convenience zone. If a dealer is located in more than one convenience zone, the department shall offer a single handling fee payment to a supermarket site located at that dealer. This handling fee payment shall not be split between the affected zones. The department shall stop making handling fee payments if another recycling center certifies to operate within the convenience zone without receiving payments pursuant to this section, if the department monitors the performance of the other recycling center for 60 days and determines that the recycling center is in compliance with this division. Any recycling center that locates in a convenience zone, thereby causing a preexisting recycling center to become ineligible to receive handling fee payments, is ineligible to receive any handling fee payments in that convenience zone.

(2) The department shall offer a single handling fee payment to a rural region recycler that is located anywhere inside a convenience zone that is not served by another certified recycling center and does either of the following:

(A) Operates a minimum of 30 hours per week in one convenience zone.

(B) Serves two or more convenience zones, and meets all of the following criteria:

(i) Is the only certified recycler within each convenience zone.

(ii) Is open and operating at least eight hours per week in each convenience zone and is certified at each location.

(iii) Operates at least 30 hours per week in total for all convenience zones served.

(d) The department may require the operator of a supermarket site or rural region recycler receiving handling fees to maintain records for each location where beverage containers are redeemed, and may require the supermarket site or rural region recycler to take any other action necessary for the department to determine that the supermarket site or rural region recycler does not receive an excessive handling fee.

(e) The department may determine and utilize a standard container per pound rate, for each material type, for the purpose of calculating volumes and making handling fee payments.

(Amended by Chapter 753, Statutes of 2003 (AB 28/Jackson, Pavley); effective January 1, 2004)

14585.5. (a) The department shall not make handling fee payments to a supermarket site if the department determines that all empty beverage container types are not redeemed at the same physical location within the recycling location.

(b) A supermarket site that redeems all empty beverage container types at the same physical location within the recycling location, and issues script to consumers which is required to be redeemed at a nearby host business, is eligible to receive handling fee payments.

14586. This division does not create any guarantee of a continuing level of support, or other obligation on the part of the State of California, the department, or any agency thereof, to pay any specified amount to any local conservation organization, community conservation corps, or statewide nonprofit private agency.

14587. This division does not require or create any obligation that payments made pursuant to this division to any local conservation organization, community conservation corps, or statewide nonprofit private agency in any given fiscal year be made in any subsequent fiscal year at the same or greater level.

CHAPTER 7.5. PENALTIES FOR UNFAIR RECYCLING COMPETITION

14588. It is the intent of the Legislature that handling fees paid to supermarket site recycling centers pursuant to Section 14585 shall only be used to offset the unique costs of providing convenient recycling opportunities to consumers at supermarket sites, and that those fees may not be expended for the purpose of engaging in unfair and predatory competition in order to reduce recycling rates of other recycling centers certified pursuant to this division.

14588.1. (a) As used in this chapter, "unfair and predatory pricing" means the payment to consumers by a supermarket site, that receives handling fees for the redemption of beverage containers, in an amount that exceeds the sum of both of the following:

(1) The California refund value for that container.

(2)(A) If the supermarket site is not located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a five-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(B) If the supermarket site is located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a 10-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(b) In calculating the three-day average price paid by recyclers within the specified distance of a recycler alleged to have engaged in predatory pricing, as required by subdivision (a), the department shall only survey those recyclers who did not receive handling fees in three or more of the 12 whole months immediately preceding the date of the allegation of predatory pricing.

(c) For purposes of this chapter, "rural region" means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

14588.2. (a) To ensure that handling fees paid to a supermarket site are not used for the purpose of engaging in unfair and predatory pricing, and to otherwise further the intent of this chapter, the department shall follow all of the requirements of this section upon the complaint of either of the following:

(1) Any certified recycler located within five miles of the supermarket site alleged to have engaged in unfair and predatory pricing if not located in a rural region.

(2) Any certified recycler located within 10 miles of the supermarket site alleged to have engaged in unfair and predatory pricing if located in a rural region.

(b)(1) Within 50 days of receiving the complaint, the department shall complete an audit of the payments for the redemption of beverage containers being paid by the supermarket site, and by all other certified recycling centers as specified in Section 14588.1, for the purpose of determining whether the supermarket site is engaged in unfair and predatory pricing.

(2) The department shall withhold from public disclosure any proprietary information collected by the department in the course of the audit mandated by this paragraph. The department shall exercise its discretion in determining what information is proprietary.

(c)(1) If the director determines there is probable cause that a supermarket site, against which a complaint has been made, has engaged in unfair and predatory pricing, the director shall, within 60 days of receiving the complaint, convene an informal hearing before the director, or the director's designee.

(2) At least 10 days before the hearing, the director shall forward the results of the audit to the complainant and respondent.

(3) At the hearing, the director, or the director's designee, shall review the audit conducted pursuant to subdivision (b) and any evidence presented by the complainant that a supermarket site has engaged in unfair and predatory pricing. The director, or the director's designee, shall also review any evidence presented by the respondent that the respondent has not engaged in unfair and predatory pricing.

(4) The respondent shall be given the opportunity to rebut the presumption of unfair and predatory pricing imposed by Section 14588.1 by demonstrating to the satisfaction of the director, or the director's designee, that the respondent did both of the following:

(A) The respondent made a good faith effort to determine the average scrap value paid per pound for that container type by certified recycling centers located within a five-mile or 10-mile radius of the supermarket site, pursuant to subdivision (a) of Section 14588.1, within 30 days before the date of the alleged violation.

(B) The three-day average scrap value the respondent paid per pound for that container type was within 2.5 percent of the three-day average scrap value paid per pound determined by the department pursuant to subdivision (a).

(5) The director, or the director's designee, may dismiss a complaint made pursuant to subdivision (a) upon determining either of the following:

(A) The complaint is without basis.

(B) The complaint is repetitious of prior similar complaints against the same supermarket site for which the director or the director's designee has determined that no unfair and predatory pricing occurred.

(d) Within 20 days of the completion of the hearing, the director, or the director's designee, shall determine whether the supermarket site has engaged in unfair and predatory pricing. This determination shall be based upon the audit conducted pursuant to subdivision (b), and upon any clear and convincing evidence of unfair and predatory pricing presented at the hearing.

(e) During the time period from the date of the receipt of a complaint pursuant to subdivision (a), until the date the director

makes a determination pursuant to subdivision (d), the supermarket site against which the allegation of unfair and predatory pricing is made shall not receive handling fees that were earned during the period commencing with the date of the alleged unfair and predatory pricing. However, nothing in this subdivision shall affect the payment of handling fees to a supermarket site that is found not to have engaged in unfair and predatory pricing pursuant to this section, or to the activities of a supermarket site prior to the date of the alleged unfair and predatory pricing.

(f)(1) If, after complying with the procedure established pursuant to this section, the director, or the director's designee, determines that a supermarket site has engaged in unfair and predatory pricing, the site is ineligible to receive handling fees as specified by this section.

(A) If the determination of unfair and predatory pricing is the first for the site, the site is ineligible to receive handling fees for six months from the date that the respondent is found to have engaged in unfair and predatory pricing.

(B) If the determination of unfair and predatory pricing is the second for the site, the site is ineligible to receive handling fees for one year from the date that the respondent is found to have engaged in unfair and predatory pricing.

(C) If the determination of unfair and predatory pricing is the third or more for the site, the site is ineligible to receive handling fees for five years after that date that the respondent is found to have engaged in unfair and predatory pricing.

(2) The penalties specified by this section shall be applied retroactively to all determinations of unfair and predatory pricing made by the director, or the director's designee, during the period from January 1, 2000, to January 1, 2002, inclusive.

(g) The complainant or respondent may obtain a review of the determination made pursuant to this section by filing in the superior court a petition for a writ of mandate within 30 days following the issuance of the determination. Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set forth in this subdivision, the determination made pursuant to this subdivision is not subject to review by any court or agency.

(h) If either party appeals the determination of the director, or the director's designee, pursuant to subdivision (g), and the department prevails, the department may recover any costs associated with its defense of the complaint.

CHAPTER 8. SEVERABILITY AND ENFORCEMENT

14590. If any provision of this division or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the division which can be given effect without the invalid provision or application, and to this end the provisions of this division are severable.

14591. (a) Except as provided in subdivision (b), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1000) for each subsequent separate violation per day.

(b)(1) Every person who, with intent to defraud, takes any of the following actions is guilty of fraud:

(A) Submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5.

(B) Fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550.

(C) Fails to make payments as required by Section 14574.

(D) Redeems out-of-state containers, rejected containers, line breakage, or containers that have already been redeemed.

(E) Returns redeemed containers to the marketplace for redemption.

(F) Brings out-of-state containers, rejected containers, or line breakage to the marketplace for redemption.

(G) Submits a false or fraudulent claim for handling fee payments pursuant to Section 14585.

(2) If the money obtained or withheld pursuant to paragraph (1) exceeds four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding ten thousand dollars ($10,000) or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld pursuant to paragraph (1) equals, or is less than, four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1000), or by both.

(c) For purposes of this section and Chapter 8.5 (commencing with Section 14595), "line breakage" and "rejected container" have the same meanings as defined in the regulations adopted or amended by the department pursuant to this division.

14591.1. (a)(1) The department may assess a civil penalty upon a person who violates this division in an amount greater than one thousand dollars ($1,000) pursuant to this division and any regulations adopted pursuant to this division only after notice and hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1

of Division 3 of Title 2 of the Government Code.

(2) The department may assess a civil penalty upon a person who violates this division in an amount equal to, or less than, one thousand dollars ($1,000), using a notice of violation process established by regulation and may use an informal hearing process pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Each violation of this division is a separate violation and each day of the violation is a separate violation. The department shall deposit all revenues from civil penalties in the Penalty Account specified in subdivision (d) of Section 14580.

(b) Any person who intentionally or negligently violates this division may be assessed a civil penalty by the department pursuant to subdivision (a) of up to five thousand dollars ($5,000) for each separate violation, or for continuing violations, for each day that violation occurs.

(c) Any person who violates this division by an action not subject to subdivision (b) may be assessed a civil penalty by the department pursuant to subdivision (a) of up to one thousand dollars ($1,000) for each separate violation, or for continuing violations, for each day that violation occurs.

(d) No person may be liable for a civil penalty imposed under subdivision (b) and for a civil penalty imposed under subdivision (c) for the same act or failure to act.

(e) In determining the amount of penalties to be imposed pursuant to this division, the department shall take into consideration the nature, circumstances, extent and gravity of the violation, the costs associated with bringing the action and, with respect to the violator, the ability to pay, the degree of culpability, compliance history, and any other matters that justice may require.

14591.2. (a) The department may take disciplinary action against any party responsible for directing, contributing to, participating in, or otherwise influencing the operations of, a certified or registered facility or program. A responsible party includes, but is not limited to, the certificate holder, registrant, officer, director, or managing employee. Except as otherwise provided in this division, the department shall provide a notice and hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code before taking any disciplinary action against a certificate holder.

(b) All of the following are grounds for disciplinary action, in the form determined by the department in accordance with subdivision (c):

(1) The responsible party engaged in fraud or deceit to obtain a certificate or registration.

(2) The responsible party engaged in dishonesty, incompetence, negligence or fraud in performing the functions and duties of a certificate holder or registrant.

(3) The responsible party violated this division or any regulation adopted pursuant to this division, including, but not limited to,

any requirements concerning auditing, reporting, standards of operation, or being open for business.

(4) The responsible party is convicted of any crime of moral turpitude or fraud, any crime involving dishonesty, or any crime substantially related to the qualifications, functions, or duties of a certificate holder.

(c) The department may take disciplinary action pursuant to this section, by taking any one of, or any combination of, the following:

(1) Immediate revocation of the certificate or registration, or revocation of a certificate or registration as of a specific date in the future.

(2) Immediate suspension of the certificate or registration for a specified period of time, or suspension of the certificate or registration as of a specific date in the future. Notwithstanding subdivision (a), the department may impose a suspension of five days or less through an informal notice, if the action is subject to a stay on appeal, pending an informal hearing convened in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Imposition on the certificate or registration of any condition that the department determines would further the goals of this division.

(4) Issuance of a probationary certificate or registration with conditions determined by the department.

(5) Collection of amounts in restitution of any money improperly paid to the certificate holder or registrant from the fund.

(6) Imposition of civil penalties pursuant to Section 14591.1.

(d) The department may do any of the following in taking disciplinary action pursuant to this section:

(1) If a certificate holder or registrant holds certificates or is registered to operate at more than one site or to operate in more than one capacity at one location, such as an entity certified as both a processor and a recycling center, the department may simultaneously revoke, suspend, or impose conditions upon some, or all of, the certificates held by the responsible party.

(2) If the responsible party is an officer, director, partner, manager, employee, or the owner of a controlling ownership interest of another certificate holder or registrant, that other operator's certificate or registration may also be revoked suspended, or conditioned by the department in the same proceeding, if the other certificate holder or registrant is given notice of that proceeding, or in a subsequent proceeding.

(3)(A) If, pursuant to a notice and a hearing conducted by the director or the director's designee in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, the department determines that the continued operation of a certified or registered entity poses an immediate and significant threat to the fund, the department may order the immediate suspension of the certificate holder or registrant, pending revocation of the certificate or registration, or the issuance of a probationary certificate imposing reasonable terms and conditions. The department shall record the testimony at the hearing and, upon request, prepare a

transcript. For purposes of this section, an immediate and significant threat to the fund means any of the following:

(i) A loss to the fund of at least ten thousand dollars ($10,000) during the six-month period immediately preceding the order of suspension.

(ii) Missing or fraudulent records associated with a claim or claims totaling at least ten thousand dollars ($10,000) during the six-month period immediately preceding the order of suspension.

(iii) A pattern of deceit, fraud, or intentional misconduct in carrying out the duties and responsibilities of a certificate holder during the six-month period immediately preceding the order of suspension. For purposes of this section, a pattern of deceit, fraud, or intentional misconduct in carrying out the duties of a certificate holder includes, but is not limited to, the destruction or concealment of any records six months immediately preceding the order of suspension.

(iv) At least three claims submitted for ineligible material in violation of this division, including, but not limited to, a violation of Section 14595.5, during the six-month period immediately preceding the order of suspension.

(B) An order of suspension or probation may be issued to any or all certified or registered facilities or programs operated by a person or entity that the department determines to be culpable or responsible for the loss or conduct identified pursuant to subparagraph (A).

(C) The order of suspension or issuance of a probationary certificate imposing terms or conditions shall become effective upon written notice of the order to the certificate holder or registrant. Within 20 days after notice of the order of suspension, the department shall file an accusation seeking revocation of any or all certificates or registrations held by the certificate holder or registrant. The certificate holder or registrant may, upon receiving the notice of the order of suspension or probation, appeal the order by requesting a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing or appeal from an order of the department does not stay the action of the department for which the notice of the order is given. The department may combine hearings to appeal an order of suspension and a hearing for the proposed revocation of a certificate or registration into one proceeding.

(D) Nothing in this section shall prohibit the department from immediately revoking a probationary certificate pursuant to subdivision (b) of Section 14541 or from taking other disciplinary action pursuant to Section 14591.2.

14591.3. In any civil or administrative action brought pursuant to this division in which the department prevails, the department may assess against the defendant or respondent any costs and fees, including attorneys' and experts' fees, and the cost of the investigation and hearing, which are incurred by the fund, whether paid or payable from the fund, and are a result of bringing the civil or administrative action against the defendant or respondent. In the same action, the defendant or respondent may claim from the department any costs and fees incurred in defending or responding to any action brought by the department in which the defendant or respondent prevails, upon a finding that the department's action

was clearly frivolous or lacking in significant merit.

14591.4. (a) In addition to any other remedies, penalties, and disciplinary actions provided by this division or otherwise, the department may seek restitution of any money illegally paid to any person from the fund, plus interest at the rate earned on the Pooled Money Investment Account of the total amount.

(b) A certificate holder is liable to the department for restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2 for payments made by the department to the certificate holder that are based on improperly prepared or maintained documents, as specified in paragraph (7) of subdivision (b) of Section 14538 and paragraph (8) of subdivision (b) of Section 14539.

(c) If the department has a civil cause of action for restitution pursuant to subdivision (a) or (b), or if the department has a civil cause of action against a certificate holder or other responsible party for restitution under any other circumstance, the department may seek restitution in accordance with the following:

(1) For restitution of an amount of more than one thousand dollars ($1,000), the department shall proceed in a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The hearing may take place at the same time as a hearing to impose disciplinary action on a certificate holder.

(2) For restitution of an amount of one thousand dollars ($1,000) or less, the department may use an informal hearing in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Notwithstanding subdivisions (b) and (c) of Section 14591.1, if the department collects amounts in full restitution for money paid, the department may impose a penalty of not more than one hundred dollars ($100) for each separate violation, or for continuing violations, for each day that violation occurs.

14591.5. After the time for judicial review under Section 11523 of the Government Code has expired, the department may apply to the small claims court or superior court, depending on the jurisdictional amount and any other remedy sought, in the county where the penalties, restitution, or other remedy was imposed by the department, for a judgment to collect any unpaid civil penalties or restitution or to enforce any other remedy provided by this division. The application, which shall include a certified copy of the final agency order or decision, shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court. The court shall make enforcement of the judgment a priority.

14591.6. (a) When a person is engaged in recycling activity that violates this division, any regulation adopted pursuant to this division, or an order issued under this division, the department may issue an order to that person to cease and desist from that activity.

(b) If a request for a hearing is filed in writing within 10 days of the date of service of the order described in subdivision (a), a hearing shall be held in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. The director or the director's designee shall determine whether to sustain or reverse the cease and desist order. If sustained, the order shall become effective and final upon the issuance and service of the order.

(c) If no written request for a hearing is filed within 10 days of the date of service of the order described in subdivision (a), or if a party requesting the hearing does not appear at the hearing, the order shall be deemed the final order of the department and is not subject to review by any court or agency. This order shall become effective and final after the expiration of the 10-day period within which a hearing may be requested.

(d) If a hearing is requested pursuant to subdivision (b) and the party requesting the hearing does not appear on the date scheduled, and fails to notify the department at least five days prior to the hearing date that the party will not appear, the department may recover from the party all costs and fees incurred by the department, including attorneys' and experts' fees, and any other costs associated with preparing for, or conducting, the hearing.

(e) Upon the failure of any person or persons to comply with any cease and desist order issued by the department, the Attorney General, upon request of the department, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person from continuing the activity in violation of the cease and desist order.

(f) The court shall issue an order directing defendants to appear before the court at a certain time and place and show cause why the injunction should not be issued. The court may grant the prohibitory or mandatory relief that may be warranted.

14593. Notwithstanding subdivisions (b) and (c) of Section 14591, the department may assess a civil penalty of up to 15 percent of the amount due for payment, and interest at the rate earned by the Pooled Money Investment Account, on distributors and beverage manufacturers for underpayment or late payment of the redemption payments for containers to the fund. The department may examine the accounts and records of distributors and beverage manufacturers which pay or should pay a redemption payment. No penalty shall be assessed until 30 days after the department has notified the distributor or manufacturer of the penalty assessment, and the amount due for payment and interest has not been paid.

14594. (a) Notwithstanding subdivisions (b) and (c) of Section 14591, the department may assess a civil penalty of up to 15 percent of the amount due for payment, and interest at the rate earned by the Pooled Money Investment Account, on any beverage manufacturer which fails to pay a processing fee required pursuant to Section 14575. The department may examine the accounts and records of any beverage manufacturer which pays or should pay a processing fee. No penalty shall be assessed until 30 days after the department has notified the manufacturer of the penalty assessment, and the amount due for payment and interest has not been paid.

(b) If the department determines that an audit of a beverage manufacturer shows that there has been an underpayment of a processing fee, the department may examine the records concerning beverage container sales of any container manufacturer who supplied the beverage containers to the beverage manufacturer.

14594.5. The department may assess upon any person, entity, or operation which redeems, attempts to redeem, or aids in the redemption of, empty beverage containers that have already been redeemed, a civil penalty of up to ten thousand dollars ($10,000) per transaction, or an amount equal to three times the damage or potential damage, whichever is greater, plus costs as provided in Section 14591.3, pursuant to notice and hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 8.5. REPORTING REQUIREMENTS AND PAYMENT PROHIBITIONS RELATED TO OUT-OF-STATE AND OTHER INELIGIBLE CONTAINERS

14595. The Legislature finds and declares that the redemption of beverage container material imported from out of state, previously redeemed containers, rejected containers, and line breakage presents a significant threat to the integrity of the beverage container recycling program and fund. It is therefore the intent of the Legislature that no refund value or other recycling program payments be paid to any person for this material. It is further the intent of the Legislature that any person participating in conduct intended to defraud the state's beverage container recycling program shall be held accountable for that conduct.

14595.4. For purposes of this chapter, the following definitions shall apply:

(a) "Person" means any individual, corporation, operation, or entity, whether or not certified or registered pursuant to this division.

(b) "Refund value" means, in addition to the definition in Section 14524, any payment by a certified recycler for beverage container material that is at least 15 percent more than the statewide average scrap value for that material type, as determined by the department for the month in which the payment was made, unless the department determines that a reasonable basis exists for that payment.

14595.5. (a)(1) No person shall pay, claim, or receive any refund value, processing payment, handling fee, or administrative fee for any of the following:

(A) Beverage container material that the person knew, or should have known, was imported from out of state.

(B) A previously redeemed container, rejected container, line breakage, or other ineligible material.

(2) No person shall, with intent to defraud, do any of the following:

(A) Redeem or attempt to redeem an out-of-state container, rejected container, line breakage, previously redeemed container, or other ineligible material.

(B) Return a previously redeemed container to the marketplace for redemption.

(C) Bring an out-of-state container, rejected container, line breakage, or other ineligible material to the marketplace for redemption.

(D) Receive, store, transport, distribute, or otherwise facilitate or aid in the redemption of a previously redeemed container, out-of-state container, rejected container, line breakage, or other ineligible material.

(b) For purposes of implementing subdivision (a), the department shall take all reasonable steps to exclude beverage container material imported from out of state, previously redeemed containers, rejected containers, and line breakage, when conducting surveys to determine a commingled rate pursuant to Section 14549.5.

14596. (a) Any person importing more than 100 pounds of aluminum, bimetal, or plastic beverage container material, or more than 1,000 pounds of glass beverage container material, into the state, shall report the material to the department and provide the department with an opportunity for inspection, in accordance with the regulations adopted by the department.

(b) The department may impose civil penalties pursuant to Section 14591.1 or take disciplinary action pursuant to Section 14591.2 for a violation of this section.

14597. (a) No person shall falsify documents required pursuant to this division or pursuant to regulations adopted by the department. The falsification of these documents is evidence of intent to defraud and, for purposes of subdivision (b) of Section 14591.1, constitutes intentional misconduct. The department may also take disciplinary action pursuant to Section 14591.2 against a person who engages in falsification including, but not limited to, revocation of any certificate or registration.

(b) No person shall submit, or cause to be submitted, a fraudulent claim pursuant to this division. For purposes of this subdivision, a fraudulent claim is a claim based in whole or in part on false information or falsified documents. Any person who submits a fraudulent claim is subject to the assessment of penalties pursuant to subdivision (b) of Section 14591.1. The department may take action for full restitution for a fraudulent claim, pursuant to Section 14591.4, and may also take disciplinary action pursuant to Section 14591.2 including, but not limited to, revocation of any certificate or registration.

14599. The department may adopt emergency regulations to implement this chapter. 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, any emergency regulations adopted pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law, and shall remain in effect until revised by the director.

PUBLIC RESOURCES CODE
DIVISION 12.7

PLASTIC WASTE

(Division 12.7 was added by Chapter 838 (AB 3299), Statutes of 1988; effective January 1, 1989)
AS AMENDED THROUGH 1/1/2003

CHAPTER 1. LEGISLATIVE FINDINGS

18000. The Legislature finds and declares the following:

(a) Facilitating the recycling of plastics is in the best interests of the state.

(b) This division is intended to require all plastic products sold in California on and after January 1, 1992, to have a molded label indicating the plastic resin used to produce the product.

CHAPTER 2. CONTAINERS AND PACKAGING

18010. "Rigid plastic container" means any formed or molded article comprised predominantly of plastic resin and having a relatively inflexible finite shape or form intended primarily as a single service container with a capacity of eight ounces or more and less than five gallons.

18011. "Rigid plastic bottle" means any rigid plastic container with a neck that is smaller than the container body with a capacity of 16 ounces or more and less than five gallons.

18012. "Label" means a code label described in Section 18015 molded into the bottom of the plastic product.

18015. (a) All rigid plastic bottles and rigid plastic containers sold in California on and after January 1, 1992, shall be labeled with a code which indicates the resin used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material. The code shall consist of a number placed inside a triangle, and letters placed below the triangle. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

1 =PETE (polyethylene terephthalate)

2 =HDPE (high density polyethylene)

3 =V (vinyl)

4 =LDPE (low density polyethylene)

5 =PP (polypropylene)

6 =PS (polystyrene)

7 =OTHER (includes multilayer)

(b) A "7" shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.

(c) On and after January 1, 1989, the Division of Recycling of the Department of Conservation shall maintain a list of abbreviations used on labels pursuant to subdivision (a) and shall provide a copy of that list to any person upon request.

18016. On and after January 1, 1992, it is unlawful to manufacture for use in this state any rigid plastic container which is not labeled in accordance with Section 18015. A violation of this section is a crime punishable by a fine of one thousand dollars ($1,000).

18017. The department shall review compliance with this chapter and shall submit a report of its evaluation to the Legislature on or before January 1, 1994.

PUBLIC RESOURCES CODE
DIVISION 12.9

FIBERGLASS RECYCLED CONTENT ACT OF 1991

(Division 12.9 was added by Chapter 706 (AB 1340), Statutes of 1991; effective January 1. 1992)
AS AMENDED THROUGH 1/1/2003

CHAPTER 1. FINDINGS AND DEFINITIONS

19500. The Legislature finds and declares all of the following:

(a) Recycling of glass sold in the state benefits the state through reduction in the need for solid waste landfills, more efficient use of energy in manufacturing, and development of an economy more efficient in its use of secondary materials.

(b) Because of the expansion of recycling collection programs in the state, there is a need to aggressively develop new markets for scrap glass.

(c) The use of scrap glass in the manufacture of fiberglass products sold in California will contribute significantly to developing markets for recycled glass.

(d) The use of cullet in fiberglass manufacturing presents no significant technical or financial barriers to industry or consumers, if the cullet meets minimum quality specifications.

(e) In order to enhance the availability and efficiency of recycling opportunities, it is in the best interest of the health and safety of the people of the state to make alternative markets for recycled glass economically feasible.

19501. This division shall be known and may be cited as the Fiberglass Recycled Content Act of 1991.

19502. For purposes of this division, the following definitions shall apply:

(a) "Cullet" means postconsumer glass from food, drink, or beverage containers, or any other glass not generated by fiberglass manufacturing.

(b) "Department" means the Department of Conservation.

(c) "Fiberglass manufacturer" means a person who uses glass in the commercial manufacture of building insulation fiberglass for wholesale or retail sale in the state.

(d) "Building insulation" means a fiberglass batt, blanket, loose fill or spray-in-place material primarily designed and used to resist heat flow, that is installed in roofs, ceilings, walls, and floors of buildings.

CHAPTER 2. FIBERGLASS RECYCLED CONTENT PROGRAM

19510. Except as provided in Section 19511, every manufacturer shall ensure that the annual tonnage of fiberglass manufactured or sold in the state by that manufacturer on and after January 1, 1992, other than fiberglass in inventory manufactured for sale before January 1, 1992, shall contain at least 10 percent cullet.

19511. The percentage of fiberglass sold which is made of cullet shall be calculated in tons used on an annual basis. Unless the department determines that an increase in the percentage of cullet would pose an unreasonable technical burden on the fiberglass manufacturer that exceeds the benefits to recycling the cullet, each fiberglass manufacturer shall increase the percentage of cullet in fiberglass in accordance with the following requirements:

(a) On and after January 1, 1994, until December 31, 1994, the percentage of cullet shall be 20 percent.

(b) On and after January 1, 1995, the percentage of cullet shall be 30 percent.

19512. On or before January 1, 1994, the department shall request comments from at least two fiberglass manufacturers, two cullet processors, and any other interested parties on the feasibility of increasing the percentage of cullet in fiberglass to 30 percent. On or before July 1, 1994, the department shall hold a public hearing, on the record, with representatives from the fiberglass industry, cullet processors, and other interested parties to determine the feasibility of increasing cullet content in fiberglass manufacturing.

CHAPTER 3. CULLET SPECIFICATIONS FOR FIBERGLASS MANUFACTURING

19515. The quality specifications provided in this chapter are the minimum quality specifications which cullet is required to meet for purposes of the exemption specified in Section 19522.

19515.5. Chemical Composition

Oxides	*Percentage Weight*	*Tolerance* *(+ or - Percentage Range)*
Silicon Dioxide	66-75	1.00
Aluminum Oxide	0-7	0.50
Calcium Oxide	5-15	0.50
Magnesium Oxide	0-5	0.50
Sodium Oxide	8-18	0.50
Potassium Oxide	0-4	0.50
Iron Oxide	less than 0.5	0.05
Chromium Oxide	less than 0.1	0.02
Sulfur Trioxide	less than 0.2	0.02
All other oxides	less than 0.1	0.02
Organic Carbon	less than 0.1	0.02
Moisture Content (No caking with free-flowing fiberglass)	less than 0.5	0.05
Loss on Ignition	less than 1.0	0.10

19516. Contaminants

Other Inorganic Material	*Percentage Weight*
+12 Mesh	None
+20 Mesh	less than 0.1
-20 Mesh	less than 0.2
Magnetic Materials	less than 0.1
Nonmagnetic Materials	None

19517. Physical Composition
Particle Size: Cullet shall be one of two types below depending upon the requirements of the fiberglass manufacturer.

Screen Size	*Coarse Cullet*	*Fine Cullet*
+1/4"	0%	0%
+12 Mesh	25% Minimum	0.5% Maximum
-200 Mesh	15% Maximum	15.0% Maximum
Color Distribution		
Type	*Nominal Percentage Weight*	*Tolerance* *(+ or - Percentage Range)*
Flint	0-100	+ or - 3.0
Green	1-100	+ or - 3.0
Amber	less than 25	+ or - 3.0

19518. The department may change minimum quality specifications based upon the fiberglass industries' ability to use cullet with higher levels of contamination.

19519. A fiberglass manufacturer shall comply with all applicable state and federal laws, regulations, and permits concerning the environment, health, or safety when using cullet in fiberglass manufacturing.

CHAPTER 4. CERTIFICATION OF USE

19520. Each fiberglass manufacturer shall, on or before March 1 of each year, submit a report to the department certifying the number of tons of cullet used for the manufacture of fiberglass during the preceding calendar year and the number of tons of fiberglass sold in the state during the preceding calendar year.

19521. Every fiberglass manufacturer who submits glass cullet content usage certification pursuant to Section 19520 may be subject to an audit by the department to ensure that the cullet was used.

19522. If a manufacturer of fiberglass is unable to obtain sufficient amounts of cullet within any certification period, the manufacturer shall certify this fact to the department and provide the department with the specific reason for failing to use cullet, including verification of a best faith effort to use the cullet, and evidence that the cullet failed to meet minimum quality specifications pursuant to Chapter 3 (commencing with Section 19515) and, therefore, presented a significant barrier to meeting the requirements of Chapter 2 (commencing with Section 19510).

19523. For the purposes of implementing and enforcing these provisions, the department shall develop and maintain a list which identifies all fiberglass manufacturers. The department shall also make available to fiberglass manufacturers names and addresses of all recyclers and processors of cullet certified pursuant to Division 12.1 (commencing with Section 14500).

CHAPTER 5. ENFORCEMENT

19530. If any person provides a fiberglass manufacturer with false or misleading information concerning the recycled content of glass cullet, the department, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

19531. If any fiberglass manufacturer provides the department with a false or misleading certificate concerning the percentage of glass cullet used pursuant to this division pursuant to Section 19520, the department, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

19532. If any fiberglass manufacturer provides the department with a false or misleading certificate concerning why the fiberglass manufacturer was unable to meet the content requirements due to technical infeasibility pursuant to Section 19522, the department, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

19533. Information on glass cullet prices or other prices obtained by the department in the course of an audit is proprietary information and the department shall not make this information available to the general public.

19534. This division does not prevent a person from selling or using fiberglass made of 100 percent virgin content, as long as the fiberglass manufacturer meets the content requirements of Chapter 2 (commencing with Section 19510).

19535. (a) Any person who violates Chapter 2 (commencing with Section 19510) or this section is guilty of an infraction punishable by a fine of not more than one thousand dollars ($1,000).

(b) In addition to subdivision (a), any person who violates this division may be assessed a civil penalty by the department of not more than one thousand dollars ($ 1,000) for each violation, pursuant to a notice and a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Any civil penalties and fines received pursuant to this section shall be deposited in the Fiberglass Recycled Content Account, which is hereby established in the California Beverage Container Recycling Fund, and the funds in that account may be expended by the department for the administration of this division upon appropriation by the Legislature.

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