



Rulemaking Archives

Covered Electronic Waste: Assessing Civil Liabilities

Description

On August 28, 2017, the Office of Administrative Law approved readopted emergency rules relating to civil liabilities pertaining to the Electronic Waste Recycling Act and associated covered electronic waste (CEW) recycling program. The effective date of the readoption is October 6, 2017.

The regulations establish a process to impose civil penalties by which any person may be held liable for false statements or representations in information or documentation transferred or maintained for the purpose of compliance with the Electronic Waste Recycling Act and associated regulations, including those related to the covered electronic waste program.

Affected Regulatory Code Sections

California Code of Regulations, Title 14, Division 7, Chapter 8.2, Article 6, commencing with Section 18660.44, with an amendment to Article 2 (18660.7(f)).

Current Status and Documents

- [Readoption transmittal to Office of Administrative Law](#)
- [Approval of readoption by Office of Administrative Law](#) (see page 2 of PDF).

The CEW program's current regulations, statutes, and historical documents can be found on the Regulatory Information page.

Historical Information

Staff filed the emergency rulemaking package with the Office of Administrative Law (OAL) on September 25, 2015.

A stakeholder workshop on the topic of assessing civil liabilities was hosted on July 14, 2015. Staff made modifications based on stakeholder feedback received. On August 19, 2015, the request for approval was signed.

[The Office of Administrative Law approved regulations implementing a civil liability component](#) to the Covered Electronic Waste recycling payment system, as authorized by Public Resources Code (PRC) section 42474(d) on October 5, 2015.

**State of California
Office of Administrative Law**

In re:
Department of Resources Recycling and
Recovery

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: 18660.44, 18660.45,
18660.46

Amend sections: 18660.7

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0817-01


OAL Matter Type: Emergency Readopt (EE)

This emergency readopt action by the Department of Resources, Recycling, and Recovery (CalRecycle) revises one section and adopts three sections in title 14 of the California Code of Regulations to implement a process for CalRecycle to impose civil liabilities for violations of the Electronic Waste Recycling Program.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/6/2017 and will expire on 10/7/2019. The Certificate of Compliance for this action is due no later than 10/6/2019.

Date: August 28, 2017



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Scott Smithline
Copy: Meagan Wilson

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 03-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0817-01EE
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 28 2017

1:40PM

2017 AUG 17 P 12:19

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of Resources Recycling and Recovery (CalRecycle)

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Administrative Civil Penalties	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0925-02E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADAPT 18660.7, 18660.44, 18660.45, 18660.46 AMEND 18660.7 REPEAL
TITLE(S) 14	LM OAL Policy request 8/28/17

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) 10/6/2017

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Meagan Wilson	TELEPHONE NUMBER 916-341-6077	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) meagan.wilson@calrecycle.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 8/16/17
TYPED NAME AND TITLE OF SIGNATORY Elliot Block, Chief Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 28 2017

Office of Administrative Law

PROPOSED - California Code of Regulations
Title 14. Natural Resources
Division 7. Department of Resources Recycling and Recovery
Chapter 8.2. Electronic Waste Recovery and Recycling

Article 2.0. Electronic Waste Payment System – Applicability and Limitations, Document Submittals, Records, Audits and Net Cost Report

§ 18660.7. Document Submittals.

- (a) A collector, a recycler, or a manufacturer shall prepare and submit applications, registrations, claims and/or reports required pursuant to this Chapter in the manner designated by CalRecycle.
- (b) CalRecycle shall only accept collector, recycler or dual entity applications, claims and reports containing all the required information and bearing an original signature of the primary applicant, or a person with signature authority as designated by the primary applicant pursuant to Section 18660.11 of this Chapter.
- (c) CalRecycle shall only accept manufacturer registrations, claims and reports containing all the required information and bearing an original signature of the primary registrant, or a person with signature authority as designated by the primary registrant pursuant to Section 18660.35 of this Chapter.
- (d) CalRecycle shall provide forms upon request that may be used to meet the requirements for the applications, registrations, and payment claims specified in this Chapter.
- (e) A collector, a recycler, or manufacturer shall ensure that applications, registrations, claims, reports and all applicable supporting documentation are accurate, complete, and typed or legibly handwritten in English using permanent ink. A collector or a recycler may void errors only by using a single line through the error. A collector or a recycler shall not use correction fluid, correction tape or erasures for correcting errors on any document required by or submitted to CalRecycle.
- (f) Any person, including but not limited to a handler, who provides documentation or information to an approved collector or an approved recycler that may be used by the approved collector or approved recycler pursuant to this Chapter shall not make a false statement or representation in the information or documentation provided.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.
Reference: Sections 42476, 42477, 42478 and 42479, Public Resources Code.

Article 6. Administrative Civil Penalties

§ 18660.44. Procedure for Imposing Civil Liabilities for False Statements or Representations.

- (a) Administrative civil penalties authorized by Public Resources Code Section 42474(d) shall be assessed in accordance with the procedures set forth in this Section.
- (b) The penalties shall be assessed as follows:
 - (1) A "Minor" violation means first-time violations where the gravity of the violation is severe. The penalties for this type of violation would be no less than five hundred dollars (\$500) and no more than four thousand dollars (\$4,000).
 - (2) A "Moderate" violation means subsequent or multiple violations. The penalties for this type of violation would be no less than four thousand dollars (\$4,000) and no more than fifteen thousand dollars (\$15,000).

PROPOSED - California Code of Regulations

Title 14. Natural Resources

Division 7. Department of Resources Recycling and Recovery

Chapter 8.2. Electronic Waste Recovery and Recycling

(3) A "Major" violation means violations that indicate a pattern and practice of noncompliance, or intentional violations. The penalties for this type of violation would be no less than fifteen thousand dollars (\$15,000) and no more than twenty-five thousand dollars (\$25,000).

(c) CalRecycle may consider any or all of the following when imposing an administrative civil penalty:

- (1) The nature, circumstances, extent, and/or gravity of the violation;
- (2) The value of the actual or potential economic benefit to the violator associated with the violation;
- (3) The amount of actual or potential harm to CalRecycle, financial or otherwise;
- (4) Any prior history of noncompliance with this Chapter, including but not limited to any prior violations of a similar nature;
- (5) Truthful and forthright cooperation during any relevant investigation, including but not limited to any measures taken by the violator to remedy the current violation or prevent future violations;
- (6) The violator's ability to pay the proposed penalty;
- (7) The deterrent effect that the imposition of the proposed penalty would have on the community as a whole and the violator; and
- (8) Any other matters that justice may require.

(d) In any case in which it is determined that more than one person or entity is responsible and liable for a violation, each such person may be held jointly and severally liable for an administrative civil penalty.

(e) Prior to the issuance of an accusation, CalRecycle may issue a prior written notice of violation alleging with specificity:

- (1) A description of the violation or violations;
- (2) The proposed penalty amount, if any; ~~(b)~~
- (3) The facts considered in determining the violation and penalty amount;
- (4) A list of corrective actions to be taken by the violator; and
- (5) An acknowledgement of receipt to be executed by the violator.

(f) CalRecycle shall issue an accusation, as defined in Government Code Section 11503, seeking an administrative penalty or penalties pursuant to this Section. The accusation and all accompanying documents may be served by personal service or registered mail.

(g) Within fifteen (15) days after service upon the respondent of the accusation seeking any administrative civil penalty, respondent may request a hearing by filing a Notice of Defense pursuant to Government Code Sections 11505 and 11506. The request for hearing may be made by delivering or mailing the Notice of Defense to CalRecycle. Failure to file a Notice of Defense within fifteen (15) days of service of the accusation shall constitute a waiver of the respondent's right to a hearing and CalRecycle may proceed upon the accusation without a hearing.

(h) CalRecycle shall provide a hearing before the director or his or her designee, who shall act as hearing officer. At any time during the proceeding, before a decision is issued, CalRecycle and the respondent(s) may engage in settlement of the matter.

(i) The hearing officer shall consider the notice of violation (if applicable), the accusation, the Notice of Defense, and all other relevant evidence presented by CalRecycle and the respondent. The hearing officer shall specify relevant procedures to be conducted during the proceeding, which include but are not limited to, informing the parties as to whether the hearing officer will consider witness testimony, and whether there shall be written and/or oral arguments. The hearing officer shall issue a written decision stating the factual and legal basis for the decision within thirty (30) days of the hearing. If the

PROPOSED - California Code of Regulations
Title 14. Natural Resources
Division 7. Department of Resources Recycling and Recovery
Chapter 8.2. Electronic Waste Recovery and Recycling

hearing officer determines that any penalties are owed, the hearing officer shall include in the written decision the date payment of the assessed penalties shall be due and paid.

(j) The respondent's failure to comply with the hearing officer's written decision may be grounds for suspension or revocation of their status as an approved collector and/or approved recycler.

(k) Except as otherwise specified herein, the hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400. The hearing shall take place in Sacramento, California unless a location is otherwise specified by the hearing officer. If respondent wishes to request an alternate location, the respondent must make that request in the Notice of Defense and provide a justification of undue burden.

(l) Penalties assessed in a hearing officer's decision may be in addition to any adjustments made pursuant to Section 18660.30 and may be offset by CalRecycle against any other amounts that are otherwise due to the respondent(s) for payment claims. In the event of settlement, the parties may agree to offset provisions in the settlement agreement.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42474, 42476, 42477, 42478 and 42479, Public Resources Code.

§ 18660.45. Procedure for Imposing Civil Liabilities for Failure to Pay a Covered Electronic Waste Recycling Fee.

(a) The administrative procedure set forth in Section 18660.44(c)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(a).

(b) The hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42474, 42476, 42477, 42478 and 42479, Public Resources Code.

§ 18660.46. Procedure for Imposing Civil Liabilities for Failure to Comply with Requirements for Manufacturers.

(a) The administrative procedure set forth in Section 18660.44(b)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(c).

(b) The hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400.

NOTE: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42474, 42476, 42477, 42478 and 42479, Public Resources Code.