

INFORMATIVE DIGEST/POLICY STATEMENT

The California Integrated Waste Management Act (CIWMA), Public Resources Code (PRC) § 40000 et seq., gives CalRecycle authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC § 40502(a) requires CalRecycle to adopt rules and regulations to implement the CIWMA, and PRC § 42475(b) provides authority to CalRecycle to adopt regulations necessary to implement the covered electronic waste recycling program (CEW Recycling Program).

The Electronic Waste Recycling Act of 2003 (PRC § 42460, et seq.) established a funding mechanism to provide for convenient collection opportunities and waste processing capabilities for certain electronic products discarded in California. Covered electronic devices (CEDs) include video display devices with screen sizes greater than four inches that have been determined by the Department of Toxic Substance Control (DTSC) to be hazardous when discarded. When CEDs are discarded, they become covered electronic waste (CEW). Under the CEW Recycling Program, approved collectors document the recovery of the CEW before transferring that material to an approved recycler. Approved recyclers receive and dismantle (cancel) the CEW, and subsequently submit claims for payment.

The CEW must be discarded by a California source to be eligible in the program. An approved collector confirms the eligibility and maintains records associated with the source of the CEW. Approved collectors that are California local governments (Local Governments) are relieved of source-specific entries (e.g., names and addresses) in otherwise required collection logs. At the outset of the CEW Recycling Program in 2005, Local Governments argued that this reduced source documentation allowance be extended to service providers acting on behalf of a Local Government. Regulations adopted in 2006 established requirements for a Local Government to designate an approved collector (Designated Approved Collector or DAC) to recover CEW on behalf of a Local Government and, in doing so, be similarly relieved of certain source documentation requirements. This process creates a designation relationship (Designation).

While this provision generally worked well and reduced paperwork burdens, it lacked clarity with regard to who was authorized to issue and receive Designations and did not achieve a desired programmatic connection to local government household hazardous waste (HHW) programs and Form 303 reporting. It also created vulnerabilities in the CEW Recycling Program when material was brought into the system beyond the scope of the Designation or when collector operations were conducted without the Local Government's knowledge or consent. In March 2017, CalRecycle filed emergency regulations to address the issues identified above and maintain the integrity of this useful tool in the CEW Recycling Program (See **Exhibit 1** for Office of Administrative Law Notice of Approval for File No. 2017-0309-02E). The emergency regulations were

readopted in March 2019 (See **Exhibit 2** for Office of Administrative Law Notice of Approval for File No. 2019-0225-01EE).

The emergency regulations addressed primarily two substantial risks to the CEW Recycling Program: 1) inconsistent and/or minimal oversight of CEW collection operations “on behalf of” Local Governments, and 2) limited ability on the part of the state to validate the eligibility of the accumulated CEW transferred into the recycling system.

CalRecycle is now seeking to make the emergency regulations permanent, as well as amend other existing regulations spanning portions of Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations. The proposed regulations intend to: (1) consolidate regulations associated with Designations into Article 7; (2) clarify terminology; (3) provide better structure for Local Governments’ use of the provision; and (4) identify roles for Local Governments, DACs, and CalRecycle when utilizing elements of the Designation provision.

Program staff held multiple workshops to address various aspects of the proposed regulations prior to the submission of the emergency regulations. Comments from the public were incorporated into those regulations. With respect to the proposed regulations, staff held an informal rulemaking workshop on November 15, 2017 to solicit comments on the draft proposed regulatory text. This workshop was offered both in-person and via webinar. There were no comments at the November 15, 2017 workshop. Due to low turnout, program staff hosted a webinar on January 16, 2018 to explain and discuss the proposed regulations presented at the November workshop.

The Request for Approval to initiate the permanent rulemaking process, executed August 5, 2019, by CalRecycle’s director, Scott Smithline, is included as **Exhibit 3**.

Benefits of the Proposed Regulations

The proposed rules benefit the State of California by mitigating risks and shoring up weaknesses of the Designation provision. The requirement for Local Governments to notify CalRecycle 30 calendar days in advance of the use of a Designation (section 18660.49(a)) promotes compliance with DTSC’s 30-calendar-day handler notification requirement pursuant to Section 66273.32(c)(1) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations. CEW Recycling Program experience has demonstrated that there is a high correlation between CEW collection events that lacked advance planning and a rate of mismanagement, violations, or risks to the CEW Recycling Program integrity. The requirement for a DAC to communicate with its Local Government at least once per year or at intervals specified by the Local Government (section 18660.48(d)) has the benefit of keeping both parties in communication with one another so that they may act compliantly and links Designations to other pre-existing programmatic reporting requirements (Form 303). By having Local Governments report accurate amounts annually, there is diminished risk that they are unaware of DAC activities conducted on their behalf. These regulations do so without placing excess

burden on DACs and Local Governments since it is a voluntary provision of a voluntary program.

The proposed rules benefit Local Governments by allowing them an option to work with willing and able electronic waste collectors in a more cost-efficient fashion by allowing the DAC source documentation relief, in most circumstances. Designations are often established due to the relationship being mutually financially beneficial for Local Governments and DACs. Absent an option to establish Designations, Local Governments may have incurred higher costs for providing electronic waste collection services to their community and instead relied on electronic waste collection services that always required full source documentation to receive state funds.

Contract waste haulers often work closely with both Local Governments and DACs and may benefit from the use of this provision. There may be contractual obligations to provide bulky item pick-ups or illegal disposal clean-up that can be managed via a Designation without the need to acquire additional source documentation.

PLAIN ENGLISH REQUIREMENTS

CalRecycle prepared the proposed regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements set forth in Government Code Sections 11342.580 and 11346.2(a)(1). CalRecycle considers the proposed regulations non-technical and drafted to be easily understood by those parties that will use them.

FEDERAL LAW OR REGULATIONS MANDATE

CalRecycle has determined that the proposed regulations do not significantly differ from federal law because there are no existing comparable federal statutes or regulations in this subject area.

CONSISTENCY WITH STATE REGULATIONS

CalRecycle performed a search of existing state regulations and finds that the proposed regulations are not inconsistent or incompatible with existing state laws or regulations.

OTHER STATUTORY REQUIREMENTS

There are no other requirements prescribed by statute that are applicable to CalRecycle or to any specific regulations or class of regulations. (Govt. Code § 11346.5(a)(4)).

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

CalRecycle has determined that the proposed regulations do not impose a mandate on state agencies, local agencies, or school districts.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CEW Recycling Program, including the associated payment system, is a voluntary program intended to relieve the costs of managing certain electronic wastes, and

businesses are not required to participate. There are no new or separate costs incurred to participate in or comply with the CEW Recycling Program's optional voluntary Designation provision. Existing regulations already require a document called Proof of Designation and specify its contents. The proposed regulations clarify these requirements and associated procedures.

The proposed regulations also include options for a Local Government. The regulations provide for circumstances and processes that can lead to the termination of a Designation but do not increase costs of compliance for the regulated businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Creation/Elimination of California Jobs

The requirements and options in the regulations will not create or eliminate jobs within the State of California. CalRecycle has conducted outreach and education as part of this regulatory effort. This outreach has enabled Local Governments to learn more about how Designations may help with their waste management needs. This may be the reason the CEW Recycling Program staff is seeing more Designations being established. While this does not expand businesses, it allows DACs to operate more efficiently and offers better financial arrangements to Local Governments.

Creation/Elimination of California Businesses

The requirements and options in the regulations will not create or eliminate businesses within the State of California. The regulations aim to clarify or modify the administrative procedures pertaining to the establishment, use, and termination of Designations. For example, completing the administrative task of completing necessary forms in advance does not increase administrative workload to justify hiring additional personnel, but rather changes the time of year during which forms are completed.

The related emergency regulations that impacted DACs in a similar fashion were approved and became effective March 16, 2017. Since then, CEW Recycling Program staff has seen the number of approved collectors declining from 400 to approximately 350, and the number of DACs remaining steady at approximately 150. At the same time, the number of active compliant Designations has increased to over 500 from 400. This indicates that the new regulations are not a threat to existing businesses within the state.

Expansion of Businesses Doing Business Within the State

There are currently approximately 350 approved collectors and 150 DACs in the CEW Recycling Program. Both approved collectors and DACs may consider collaborating with Local Governments to exercise the option to establish or maintain Designations, which requires their thorough understanding of the regulations.

Businesses participating in the Designation process are collectors of electronic waste that are approved participants in the CEW Program. Other actors such as non-

participating handlers, transporters, or upstream entities interface with the CEW Recycling Program by providing material management services. The CEW Recycling Program, including the associated payment system containing the Designation provision, is a voluntary program intended to relieve the costs of managing certain electronic wastes. Businesses are not required to participate in the CEW Recycling Program. However, participants must comply with applicable laws and regulations, including State HHW rules that govern the handling and reporting of CEW.

Benefits of the Regulations to Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations benefit the health and welfare of the residents of California by: (1) allowing for convenient and safe electronic waste collection activities; (2) reducing the likelihood of Designations being used inappropriately, thereby protecting the integrity of public funds; (3) promoting a level playing field between CEW Recycling Program participants; and (4) fostering fair business practices.

FISCAL IMPACT

Cost or Savings to Any State Agency

CalRecycle has determined that the proposed regulations do not result in any cost or savings to any state agency.

Cost to Any Local Agency or School District

CalRecycle has determined that the proposed regulations do not result in cost to any local agency or school district that is required to be reimbursed pursuant to Government Code section 17500 *et seq.*

Non-Discretionary Cost or Savings Imposed Upon Local Agencies

CalRecycle has determined that there are no non-discretionary costs or savings imposed upon any local agencies.

Cost or Savings in Federal Funding to the State

CalRecycle has determined that there are no costs or savings in federal funding to the state.

FINDINGS ON NECESSITY OF REPORTS

CalRecycle has determined that the requirement for specific reports is necessary for the health, safety, and welfare for the people of the state because it will help to ensure that the law applies equally to covered entities.

EFFECT ON HOUSING COSTS

CalRecycle made a determination that the proposed regulations will not have an effect on housing costs.

EFFECT ON BUSINESSES

CalRecycle has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. CalRecycle is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new or separate costs incurred to participate in or comply with the CEW Recycling Program. The CEW Recycling Program is a cost relief program established pursuant to the Electronic Waste Recycling Act of 2003. Its intent is to offset cost for the otherwise compliant management of certain electronic wastes. Existing regulations already contain the optional Designation provision that is being reformed. The proposed regulations consolidate requirements associated with Designations into one Article 7 and make further amendments to clarify certain requirements. Most of the amendments in the proposed text are the result of stakeholder feedback. The related emergency regulations incorporated a six-month sunset clause whereby invalidated Designations were honored until September 12, 2017, so that financial impacts on collectors were mitigated as they conformed to the emergency regulations. These emergency regulations were readopted on March 17, 2019. The requirements of the proposed regulations that are now being finalized are no more burdensome than the emergency regulations already in effect.

There are currently approximately 350 approved collectors and 150 DACs in the CEW Recycling Program. Both approved collectors and DACs may consider collaborating with Local Governments to exercise the option to establish or maintain Designations, which requires their thorough understanding of the requirements.

EFFECT ON SMALL BUSINESSES

The majority of potentially affected businesses are small businesses. Only approved collectors would be directly affected by these rules, and approximately 75 percent of these are small businesses.

EFFECT ON THE CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

The requirements and options in the regulations will not create or eliminate businesses within the State of California. The regulations aim to clarify or modify the administrative procedures pertaining to the establishment, use, and termination of Designations. For example, completing the administrative task of completing necessary forms in advance does not increase administrative workload to justify hiring additional personnel, but rather changes the time of year during which forms are completed.

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from 400 to approximately 350, and the number of DACs remain steady at approximately 150. At the same time, the number of active compliant Designations has increased to over 500 from 400. This indicates that the new regulations are not a threat to existing businesses within the state.

CONSIDERATION OF ALTERNATIVES

CalRecycle must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention: (1) would be more effective in carrying out the purpose for which the action is proposed; (2) would be as effective and less burdensome to affected private persons than the proposed action; or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CalRecycle considered alternatives to the proposed rules and determined that: 1) no alternative would be more effective in carrying out the purpose for which the action is proposed; 2) no alternative would be as effective and less burdensome to affected private persons, while at the same time protecting human health, safety, and the environment, and the integrity of public funds; and 3) no alternative would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

At the CalRecycle December 16, 2015, stakeholder workshop regarding the Designation requirements, a variety of alternative implementations were discussed, including eliminating the provision altogether. Stakeholders voiced the value of the optional provision and supported its continued existence. Discussions centered around ways to modify the provision to provide for better fiduciary oversight of the fund. The white paper 'Reforming Designations: Issues to Consider,' associated with the December 16, 2015, workshop, explored a variety of alternatives for topic areas of concern, which included: issuance/establishment of a Designation, advanced planning/communication, context and conditions, limitations, duration/expiration, and accountability/consequences. Stakeholder input was taken into consideration in developing the final proposed regulations.

CONTACT PERSONS

Inquiries concerning the proposed action may be directed to:

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The back-up contact person to whom inquiries concerning the proposed action may be directed:

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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CalRecycle will have the entire rulemaking file, the express terms of the proposed regulations, and all information that provides the basis for the proposed action, available for inspection and copying throughout the rulemaking process at the address provided above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the text of the proposed regulations, the initial statement of reasons (ISOR), and the economic and fiscal impact statement. Copies may be obtained by contacting Ana-Maria Stoian-Chu or Lynette Lewis at the address, e-mail, or phone number listed above. For more timely access to the text of the proposed regulations, and in the interest of waste prevention, interested parties are encouraged to access [Designated Approved Collectors Regulations webpage](#) at:

<https://www.calrecycle.ca.gov/electronics/reginfo/designatedregs>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

CalRecycle may adopt the proposed regulations substantially as described in this Notice after holding the hearing and considering all timely and relevant comments. If CalRecycle makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact person named above. CalRecycle will transmit any modified text to all persons who testify at the public hearing, all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. CalRecycle will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be available at the webpage listed herein, or you may contact the individuals listed above.