

REQUEST FOR APPROVAL

To: **Scott Smithline**
Director

From: **Howard Levenson**
Deputy Director, Materials Management and Local Assistance Division

Request Date: July 31, 2019

Decision Subject: Updated Regulations Amending the Covered Electronic Waste Recycling Program and Finalizing Existing Emergency Regulations Relative to Designated Approved Collectors

Action By: August 7, 2019

Summary of Request

Staff seeks approval to initiate the formal rulemaking process and formally notice proposed regulations that would amend aspects of current regulations governing the covered electronic waste (CEW) recycling program, as well as finalize related emergency rules adopted in 2017 and readopted in 2019.

Staff initially requested approval from the Director to initiate the permanent rulemaking effort in January 2018. However, based on experience implementing the emergency regulations, CalRecycle staff has revised the originally proposed regulations and requests approval of the updated regulations.

The updated regulations were approved at CalRecycle's July Public Meeting. Subsequently, staff received a comment from stakeholders and, in response, made a minor revision in the proposed language. In subsection 18660.48(b), staff deleted the phrase "record, as a separate transfer," and replaced it with "separately log." This Request for Approval was also revised. Under the section titled, General Intent for Proposed Regulations, the second sentence in the second bulleted list was amended to read as follows: "Requiring a DAC to provide separate collection logs per each designation." The revised updated regulations are attached hereto for reference.

The proposed regulations establish and clarify requirements related to participating in the CEW recycling program as a designated approved collector, the responsibilities and options when a local government chooses to designate an approved collector, and CalRecycle's oversight and administrative responsibilities for the provision.

The proposed regulations apply to Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations.

Recommendation

Staff recommends approving the proposed updated regulations that would modify areas within Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations and directing staff to complete required fiscal and economic analyses prior to filing documents with the Office of Administrative Law to initiate the formal rulemaking process. The proposed regulatory language can be found in Attachment 1.

Director Action

On the basis of the information and analysis in this Request for Approval, I hereby approve the Updated Regulations Amending the Electronic Waste Recycling Program and direct staff to prepare documents necessary to perform required analyses and file the proposed regulations with the Office of Administrative Law to initiate the formal rulemaking process.



Scott Smithline
Director



Date Signed

Attachments

1. Proposed Electronic Waste Regulations—Title 14 CCR Division 7 Chapter 8.2 Section 18660.5 et seq. Administration of the Electronic Waste Recycling Act of 2003; Public Resources Code 42460 et seq.
2. Issues Addressed with Proposed Revisions to Designated Approved Collector Regulations

Background and Analysis

Statutory Authority

The authority to adopt regulations to implement and administer the Electronic Waste Recycling Act of 2003 is found in Public Resources Code (PRC) § 42475. Portions of the proposed regulations were previously adopted in March 2017 and readopted in March 2019 under emergency authority established by PRC § 42475.2.

Program Background

The Electronic Waste Recycling Act of 2003 (PRC § 42460, *et seq.*) establishes a funding mechanism to provide for convenient collection opportunities and waste processing capabilities for certain electronic products discarded in California. Covered electronic devices (CED) 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 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 the provision of a designated approved collector (DAC) to recover CEW on behalf of a Local Government and, in doing so, be similarly relieved of certain source documentation requirements.

The regulations specified: (1) the process for an approved collector to secure a designation from a local government; and (2) the information the designation was required to contain. This information was embodied in a proof of designation (POD). The POD was used by the DAC to demonstrate the DAC's approval status and to inform recyclers who received CEW collected by the DAC of the applicable source documentation requirements. The POD was also a required document within CEW recycling payment claims so that CalRecycle could track volumes and determine compliance of associated source documentation.

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 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 program. The emergency regulations were readopted in March 2019.

General Intent of Proposed Regulations

The intent of this rulemaking is to finalize the existing emergency regulations, adopted in March 2017 and readopted in March 2019, as well as to amend and clarify other requirements relative to the CEW recycling program. The consideration of issues that led to the development of the emergency regulations spanned more than three years, with numerous opportunities for stakeholder feedback. Stakeholder workshops addressing these issues were held annually from 2013 to 2017. Staff proposed adjustments to the designation provisions to clarify limits and definitions of local operations, define appropriate representatives of local government, improve real-time monitoring of CEW collection activities, and ensure meaningful accountability. These provisions were introduced as part of the March 2017 emergency regulation package and are included in the proposed final regulations:

- Clarity regarding the meaning of a designation and its connection to local government HHW program function as reported in annual Form 303 reports;
- Advance planning and notification;
- Clarity on authority within local government to issue designations;
- Operational limitations and reporting requirements for DACs;
- Specifications for the content of PODs; and
- Conditions under which a designation may be terminated.

Staff is proposing additional amendments to the existing emergency regulations to provide clarity, based on feedback received from stakeholders and CalRecycle staff experience during the implementation process. These revisions include:

- Simplifying illegal disposal cleanup for local governments;
- Requiring a DAC to provide separate collection logs per each designation;
- Clarifying the process to establish a designation and the scope of a designation;
- Allowing a local government to correct deficiencies in the POD; and
- Removing invalidation scenarios and amending termination scenarios.

For more details, please refer to the next section as well the Attachment 2 Issues Matrix, which was presented as part of the November 2017 informal workshop and which has been slightly re-edited to reflect updated sections in the proposed regulation text.

Proposed Regulations: Main Provisions

With the exception of conforming edits to existing regulations contained in Articles 1, 2.0, and 2.2 of Chapter 8.2, all proposed regulations concerning DACs are placed within a new Article 7. Specifically, the following sections are added:

- Definitions (14 CCR § 18660.47)
- Additional Requirements for Designated Approved Collectors (14 CCR § 18660.48)
- Proof of Designation (14 CCR § 18660.49)
- Termination of Designation (14 CCR § § 18660.50)

Definitions (14 CCR § 18660.47)

The terms “Designation” and “Local Government” are defined so that appropriate parties may enter into a relationship whereby roles and responsibilities are well articulated.

(1) “Designation” means an arrangement that a Local Government initiates with an approved collector so that the approved collector shall act as a Designated Approved Collector and provide CEW collection services on behalf of the Local Government. The Designation constitutes a local program subject to Form 303 reporting requirements pursuant to Section 18751.2 of this Title. Details and evidence of the Designation are specified in a Proof of Designation pursuant to Section 18660.49(b).

(2) “Local Government” means a California city, county, city and county, a joint powers authority, or public service district responsible for household hazardous waste or residential waste management planning or services.

Additional Requirements for Designated Approved Collectors (14 CCR § 18660.48)

This section clarifies source documentation requirements. A DAC is only relieved of specific source documentation requirements when acting within the scope of the designation as outlined in the POD.

This section also clarifies the connection between a designation and a local HHW program. Under existing regulations not associated with the CEW recycling program, local governments must annually submit Form 303 reports detailing the types of local HHW programs in their jurisdictions and the quantity of HHW recovered. This section requires the DAC to communicate their activities to the designating Local Government for incorporation into the Local Government Form 303 collection numbers. The intent is to reinforce communication that should already be

taking place. This communication helps ensure a DAC's CEW recovery activities remain within the scope and jurisdictional boundary of the designation.

Proof of Designation (14 CCR § 18660.49)

This section clarifies the process of establishing a designation. The local government is required to transmit the POD to CalRecycle and CalRecycle must receive the POD at least 30 calendar days in advance of any CEW collection activities conducted by the DAC. In addition, a designation is deemed established when CalRecycle contacts the local government and the DAC to confirm that CEW collection activities can begin under the designation.

The POD is used to memorialize the length and scope of a designation (14 CCR § 18660.49(b)(1) through (3)). The designating authority of the local government is required to sign certification statements (14 CCR § 18660.49(b)(6)) stating knowledge of applicable laws and regulations, and authority to execute agreements or contracts related to waste management on behalf of the local government. The DAC representative also signs a certification statement stating it is an authorized signatory listed in the application for approval in the CEW recycling program and that the DAC will operate compliantly (14 CCR § 18660.49(b)(9)).

Termination of a Designation (14 CCR § § 18660.50)

In general, the length of a Designation is the prerogative of the designating local government and is bound fundamentally by the DAC maintaining its approved status in the CEW recycling program. However, the proposed regulations provide for circumstances and processes that can lead to the termination of a designation (14 CCR § 18660.50).

Stakeholder / Staff Discussions

Over the course of several years, program staff have had several opportunities to engage with stakeholders on the topic of designations.

- A question often discussed with stakeholders was whether the designation provision was a necessary part of the CEW recycling program. There have been no stakeholder comments calling for its elimination, and the general consensus is to reform the provision in order to continue to offer a tool that both local governments and collectors appreciate.
- Stakeholders provided substantial feedback on the definition of "Local Government," with interest aiming for specificity as well as inclusiveness. Program staff incorporated this feedback and crafted a definition that is flexible to include unique local government circumstances (such as San Francisco being both a city and county), as well as special districts, authorities, and agencies responsible for providing or planning public waste management services.

Program staff held an informal rulemaking workshop on November 15, 2017 to solicit comments on the draft proposed regulatory text. 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.