



## NOTICE OF PROPOSED RULEMAKING

**Title 14:** Natural Resources  
**Division 7:** Department of Resources Recycling and Recovery  
**Chapter 8.2:** Electronic Waste Recovery and Recycling  
**Articles/Sections:** Article 1, § 18660.5, Article 2, § 18660.10; Article 2.2, § 18660.21; Article 2.3, § 18660.34.

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## PROPOSED REGULATORY ACTION

The Department of Resources Recycling and Recovery (CalRecycle) proposes to amend California Code of Regulations (CCR), Title 14, Division 7, Chapter 8.2 commencing with Section 18660.5. The proposed regulations establish and clarify requirements related to participating in the Covered Electronic Waste (CEW) Recycling Program as an approved recycler, and CalRecycle's administrative responsibilities related to recycling payment rates and net cost reporting. CalRecycle intends to adopt the proposed regulations described herein after considering all recommendations, comments, and objections regarding the proposed action.

## PUBLIC HEARING

A public hearing to receive public comments is scheduled for October 21, 2021. This hearing will be accessible through two formats: an interactive webinar and [public webcast](#). The webcast can be accessed by visiting the following web address:

<https://video.calepa.ca.gov/#/>

Those wishing to make oral comments must first [register](#) for the webinar, after which they will receive a confirmation email containing information about joining the webinar hearing. The registration page can be accessed by visiting the following web address:

<https://register.gotowebinar.com/register/4536742622872142864>

Stakeholders who wish to make comments orally during the webinar hearing may raise their hand using the webinar functions and make oral comments when called upon. If persons experience technical difficulties during the pre-registration process or during the hearing, persons shall email written comments to [ewaste@calrecycle.ca.gov](mailto:ewaste@calrecycle.ca.gov).

CalRecycle will read the written comments received during the hearing at [ewaste@calrecycle.ca.gov](mailto:ewaste@calrecycle.ca.gov) during the webinar.

The webinar hearing will begin at **10 a.m. on October 21, 2021**, and **will conclude at 3 p.m.**, or after all testimony is given. Any person may present statements or arguments, orally or in writing, with respect to the proposed action. CalRecycle requests that persons making oral comments also submit a written copy of their testimony at the hearing no later than the close of the written comment period on **October 25, 2021**. If you have any questions, please contact:

**Matt Sheehan**

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**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit to CalRecycle written comments relevant to the proposed regulations. **The written comment period for this rulemaking closes on October 25, 2021. CalRecycle will consider only comments received by CalRecycle by that time.** CalRecycle will also accept verbal comments during the public hearing, as described above. Please submit your written comments to:

**Matt Sheehan**

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**AUTHORITY AND REFERENCES**

Public Resources Code Sections (PRC) 42475 provides authority for the proposed regulations. The proposed regulations were previously adopted and readopted under emergency authority established by PRC Section 42475.2. PRC Section 42478 mandates CalRecycle to establish a CEW recycling payment schedule to cover the average net cost for each major category of CEW received, processed, and claimed. The purpose of the proposed action is to implement, interpret, and make specific laws related to the implementation and administration of the CEW Recycling Program. The following is a list of references cited in the proposed regulations: PRC Sections 42463, 42464, 42465.2, 42475(a), 42476, 42477, 42478 and 42479.

The following sections of the CCR are being implemented, interpreted, made specific, or repealed: Article 1, § 18660.5, Article 2, § 18660.10; Article 2.2, § 18660.21; Article 2.3, § 18660.34.

## **INFORMATIVE DIGEST / POLICY STATEMENT**

The California Integrated Waste Management Act (CIWMA), Public Resources Code (PRC) Section 40000 et seq., gives the Department of Resources Recycling and Recovery (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 Section 40502(a) requires CalRecycle to adopt rules and regulations to implement the CIWMA, and PRC Section 42475(b) provides authority to CalRecycle to adopt regulations necessary to implement the covered electronic waste (CEW) recycling program (CEW Recycling Program).

The Electronic Waste Recycling Act of 2003 (PRC Section 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 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 (or “cancel”) the CEW, compliantly manage derived residuals, and subsequently submit claims for payment. CalRecycle pays approved recyclers the Standard Statewide Combined Recovery and Recycling Payment Rate for the weight of CEW cancelled and claimed, which includes a component for recovery costs and a component for recycling costs. Each year, approved recyclers are required to report the costs and revenues associated with processing CEW.

Historically, the majority of the CEW material entering into the payment system has been CRTs. CRTs remain the predominant waste stream, but non-CRT volumes are increasingly becoming a more significant portion of the stream. Non-CRT CEW volumes have grown from approximately 1% of the total CEW volume by weight (2.2 million pounds) in 2011 to 41% (30 million pounds) in 2020.

The management of non-CRT CEW poses numerous challenges to the recycling industry. Non-CRTs are more difficult to dismantle because they require a longer processing time and often have less intrinsic material value than CRTs. In addition, they contain residuals that: (1) are fully regulated hazardous waste, entailing high disposal costs (e.g., plasma panels); or (2) require special handling (e.g., fluorescent lamps). As non-CRTs are lighter and CEW recycling payments are weight based, recyclers are paid less for these devices although they are more costly to manage.

In March 2018, CalRecycle filed emergency regulations to address the issues identified above. These regulations provided a structure for pursuing multiple CEW recycling payment rates by splitting the CEW recycling payment rate to allow for multiple recycling payment rates (Differential Payment Structure): one payment rate for CRT CEW and another payment rate for non-CRT CEW (See **Exhibit One** for Office of Administrative Law Notice of Approval for File No. 2018-0502-04E). The emergency regulations were readopted in March 2020 (See **Exhibit Two** for Office of

Administrative Law Notice of Approval for File No. 2020-0318-04EE). CalRecycle seeks to make final the existing regulations with no substantial changes.

Prior to the adoption of the Differential Payment Structure regulations, CalRecycle regulations: required payment to recyclers based on a single payment rate for both CRT CEW and non-CRT CEW (CCR, section 18660.34); did not require recyclers to differentiate between CRT CEW and non-CRT CEW in net cost reports (CCR, section 18660.10); and required recyclers to maintain records regarding net costs for handling all CEW, without specific information regarding net costs to manage CRT CEW separately from non-CRT CEW.

The language of the existing regulations, proposed for finalization, differs from the previously adopted Differential Payment Structure emergency regulations due to unrelated file and print Payment Rate regulations, which changed the payment rate

Following the adoption of the Differential Payment Structure regulations, CalRecycle filed a file and print regulations package to change the payment rate for non-CRT CEW (Payment Rate) in 2018 (see OAL File No. 2018-0523-01) and again in 2020 (see OAL File No. 2020-0527-02) ("Payment Rate"). The Differential Payment Structure and the Payment Rate regulations concern one overlapping section – California Code of Regulations (CCR) Section 18660.34. Upon readoption, the Differential Payment Structure will remain the same as in the previously adopted regulations, meeting the requirement in Government Code Section 11346.1(h).

In addition, CalRecycle intends to fix three non-substantial grammatical errors.

The Request for Approval to initiate the permanent rulemaking process, executed May 5, 2021, by CalRecycle's director, Rachel Machi Wagoner, is included as **Exhibit Three**.

### **Policy Statement Overview and Benefits (Gov. Code Section 11346.5 (a)(3)(C))**

The objective of the proposed regulations is to establish the regulatory structure necessary to accommodate a differential payment rate for non-CRT CEW. The proposed regulations split the existing CEW recycling payment rate into separate payment rates for CRT CEW and non-CRT CEW. The proposed rules benefit approved recyclers by creating a payment rate structure that reflects the different net costs associated with processing CRT CEW and non-CRT CEW. This enables approved recyclers to receive an adequate payment rate for recycling non-CRT CEW. In addition, the proposed regulations benefit the health and welfare of the residents of California by allowing for convenient and safe electronic waste collection activities. A separate payment rate for non-CRT reduces the likelihood of illegal disposal of hazardous materials because a recycler won't have to charge consumers an additional disposal fee to remain profitable.

### **Benefits of the Proposed Regulations**

CalRecycle has the statutory authority pursuant to PRC Section 42478 to establish a recycling payment schedule to cover the average net cost to receive, process, and recycle each major category of CEW. At the inception of the CEW Recycling Program, CalRecycle adopted regulations that included one single recycling payment rate for all CEW. Net Cost Reports, required pursuant to CCR Title 14, Section 18660.10, are intended to describe the costs and revenues associated with the handling of CEW within the scope of the CEW Recycling Program.

CalRecycle conducted targeted outreach in 2017 to recyclers that processed non-CRT CEW to learn more about their operations and the costs and revenues associated with processing non-CRT CEW. At the time, only a portion of CA recyclers were processing non-CRT material due to the cost reasons listed previously. Thirteen CRT recyclers and seven non-CRT recyclers provided CalRecycle split cost and revenue reports in 2017 on a voluntary basis. The report data confirmed CalRecycle's expectation that CEW recyclers required a larger payment rate for the processing of non-CRT CEW to remain viable as CRT CEW volumes diminished.

In order to accomplish higher payment rates for non-CRT processing, a regulatory structure was needed, allowing for multiple payment rates. In 2018, CalRecycle split the single CEW recycling payment rate to allow for one payment rate for CRT CEW and another payment rate for non-CRT CEW. The payment rates were revised through a separate file and print package, to reflect differential values for CRT and non-CRT CEW, effective July 1, 2018.

Splitting the payment rate allowed CalRecycle to assess the Net Cost of processing CRT and non-CRT devices separately. Since the 2018 net cost reporting cycle, separate CRT and non-CRT CEW cost calculations were required. The results of those reports clearly show that the net cost to process non-CRT CEW is significantly higher than CRT CEW. For additional information, please see the Net Cost data table provided on page four of the Initial Statement of Reasons.

Since the bifurcated rate was established, CalRecycle has taken advantage of this opportunity by setting a higher payment rate for non-CRT CEW. The payment rates were revised to their current values, through a second file and print package, effective July 1, 2020. For additional information, please see the CEW fee data table provided on page five of the Initial Statement of Reasons.

Since CalRecycle instituted the bifurcated rate, the CEW Recycling Program has seen a net gain in the number of approved recyclers that process non-CRT devices from thirteen in 2018 to eighteen in 2020.

### **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 (Gov. Code Section 11346.5 (a)(3)(B))**

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 (Gov. Code Section 11346.5 (a)(3)(D))**

Pursuant to Government Code Section 11346.5(a)(3)(D), CalRecycle performed a search of existing state regulations and finds that this emergency rulemaking is not inconsistent or incompatible with existing state regulations.

**OTHER MATTERS SPECIFIC TO CALRECYCLE (Gov. Code Section 11346.5 (a)(4))**

CalRecycle has determined that no other matters, as prescribed by statute, need to be addressed.

**MANDATES ON LOCAL AGENCIES AND SCHOOL DISTRICTS (Gov. Code Section 11346.5 (a)(5))**

CalRecycle has determined that adoption of these regulations will create no new local mandates.

**ESTIMATES OF POTENTIAL COSTS OR SAVINGS (Gov. Code Section 11346.5 (a)(6))**

**Cost or Savings to Any State Agency**

CalRecycle has determined that adoption of these regulations will have indeterminable costs to state agencies. It is anticipated that CalRecycle will absorb all of the costs.

**Local Agencies or School Districts Subject to Reimbursement**

CalRecycle has determined that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to Government Code Section 17500 *et seq.*, or other non-discretionary costs or savings to local agencies or school districts.

**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 adoption of these regulations will have no impact on costs or savings in federal funding to the State.

**Significant effect on housing costs**

None.

**ECONOMIC IMPACT STATEMENT**

**Estimated Private Sector Cost Impacts**

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 (Government Code section 11346.5(a)(9)). There are no new or separate costs incurred to participate in or comply with the Covered Electronic Waste (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.

The proposed regulations split the single CEW recycling payment rate into separate payment rates for CRT CEW and non-CRT CEW. The proposed regulations establish the regulatory structure necessary to accommodate a differential payment rate for non-CRT CEW. This allows recyclers to receive an increased payment for processing/recycling non-CRT CEW given that the net cost of processing/recycling is higher for non-CRT CEW than CRT CEW.

The related emergency regulations that impacted approved recyclers were approved and became effective in May of 2018. These emergency regulations were readopted in May of 2020 and expire in May of 2022. The requirements of the proposed regulations that are now being finalized are no more burdensome than the emergency regulations already in effect. In effect, the requirements of the proposed regulations benefit the impacted businesses.

#### **Creation or Elimination of Businesses within the State of California (Gov. Code. Section 11346.5(a)(10))**

The requirements and options in the regulations will not create or eliminate businesses within the State of California. The proposed regulations split the original payment rate for CEW into separate rates for CRT and non-CRT CEW. However, the rules do not create new and separate material management standards.

The related emergency regulations that impacted approved recyclers were approved and became effective in May 2018. They were readopted in May 2020 and expire in May 2022. The change in regulatory structure enabled CalRecycle to pursue different payments and, as such, significantly increase the payment rate for non-CRT CEW. This has resulted in a net gain in the number of approved recyclers that process and claim non-CRT CEW for payment from thirteen in 2018 to eighteen in 2020.

#### **Creation or Elimination of Jobs within the State of California (Gov. Code. Section 11346.5(a)(10))**

The requirements and options in the regulations will not create or eliminate jobs within the State of California. The proposed regulations split the single CEW recycling payment rate into separate payment rates for CRT CEW and non-CRT CEW pursuant to the Electronic Waste Recycling Act of 2003. However, the rules do not create new and separate material management standards. Splitting the single rate into multiple rates has allowed additional recyclers to begin profitably processing non-CRT CEW. This has resulted in a net gain of recyclers that process and claim non-CRT CEW for payment from thirteen in 2018 to eighteen in 2020. These recyclers were not new to the CEW Recycling Program, as they were already approved recyclers processing CRT material. Since the volume of CRT processed by recyclers is decreasing annually due to depletion of legacy material, CalRecycle has no way of knowing if the five new non-CRT recyclers hired additional employees or shifted the duties of existing employees that were processing CRTs.

#### **Creation of New Businesses or Elimination of Existing Businesses within California (Gov. Code. Section 11346.5(a)(10))**

The requirements and options in the regulations will not create or eliminate businesses within the State of California. The proposed regulations split the original payment rate

for CEW into separate rates for CRT and non-CRT CEW. However, the rules do not create new and separate material management standards.

The related emergency regulations that impacted approved recyclers were approved and became effective in May 2018. They were readopted in May 2020 and expire in May 2022. The change in regulatory structure enabled CalRecycle to pursue different payments and, as such, significantly increase the payment rate for non-CRT CEW. This has resulted in a net gain of recyclers that process and claim non-CRT CEW for payment from thirteen in 2018 to eighteen in 2020.

### **Expansion of Businesses Doing Business within the State (Gov. Code. Section 11346.5(a)(10))**

There are currently twenty approved recyclers in the CEW Recycling Program. Approved recyclers must apply to participate by submitting certain documents that demonstrate eligibility. Subsequently, approved recyclers conduct and document CEW recycling activities. Approved recyclers submit payment claims to CalRecycle. Since the recycling rate was split into two rates, there has been a net gain in the number of approved recyclers that process and claim non-CRT CEW for payment from thirteen in 2018 to eighteen in 2020.

### **Benefits to the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment (Gov. Code. Section 11346.5(a)(10))**

The proposed regulations benefit the health and welfare of the residents of California by allowing for convenient and safe electronic waste collection activities. A separate payment rate for non-CRT reduces the likelihood of illegal disposal of hazardous materials because a recycler won't have to charge consumers an additional disposal fee to remain profitable. CalRecycle has determined that this regulatory proposal will not affect worker's safety and the state's environment.

### **Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code. Sections 11346.3(a), 11346.5(a)(7-8))**

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 required recyclers to provide a combined report for all CEW processed.

### **Business Report (Gov. Code. Section 11346.5(a)(11))**

The regulations require recyclers to provide a report regarding net costs to manage both CRT CEW and non-CRT CEW. Previously, recyclers were required to provide a report for all CEW combined, without separating costs into CRT and non-CRT CEW. The report requirement applies to businesses that are approved recyclers in the CEW Recycling Program. It is necessary for the health, safety, and welfare of the people of the state that the regulations and reporting requirements apply to businesses.



## **Small Business (1 CCR 4(a-b))**

The majority of potentially affected businesses are small businesses. Only approved recyclers would be directly affected by these rules, and approximately 90 percent of these are small businesses.

### **CONSIDERATION OF ALTERNATIVES**

Alternatives to the proposed rules have been considered. CalRecycle conducted targeted outreach in 2017 to recyclers that process non-CRT CEW to learn more about non-CRT operations. After drafting emergency regulations, CalRecycle solicited comments on the draft proposed regulatory text at a 2018 workshop. Stakeholders supported the proposed action and were looking forward to the actual determination of the payment rates.

CalRecycle primarily uses net cost data to set the Standard Statewide Combined Recovery and Recycling Payment Rates. Net Cost Reports, required pursuant to Title 14 of California Code of Regulations, section 18660.10, are intended to describe the costs and revenues associated with the handling of CEW within the scope of the CEW Recycling Program. Thirteen CRT recyclers and seven non-CRT recyclers provided CalRecycle split cost reports in 2017 on a voluntary basis. Since the 2018 net cost reporting cycle, separate CRT and non-CRT cost calculations were required.

In terms of reported numbers, CalRecycle has continued to see a significant difference in the cost per pound to process CRT and non-CRT CEW. Based on the weighted average of all recyclers in the CEW Recycling Program, the net cost to recycle CRT in 2019 was 27.7 cents per pound, while the net cost to recycle non-CRT in 2019 was 40.6 cents per pound.

CalRecycle considered three alternatives to the proposed rules: adding multiple rates for non-CRT CEW; having a per unit rate structure rather than a per pound rate structure; or continuing on with no changes (keep the single payment rate).

A per unit weight structure may work in the future as materials become lighter, but recyclers are still processing heavy legacy material. CalRecycle does not believe that it currently makes sense to pay the same recycling rate on a small non-CRT device such as a tablet and large, heavy devices such as plasma or CRT televisions. The latter devices can weigh over 100 pounds, take up more storage space and can require multiple employees or specialized equipment to unload them from trucks and to move them to storage areas and dismantling tables. They also produce greater volumes of hazardous residuals which adds additional disposal costs.

Having multiple rates for non-CRT devices would have added the burden of requiring recyclers to calculate the costs and revenues of additional non-CRT waste streams in the annual Net Cost Reports. This approach may have been effective, but it is not cost-effective and too burdensome on the recyclers. It should be noted that no stakeholder has supported this option at any of CalRecycle's previous workshops or public hearings.

Continuing with no changes would have negatively affected recyclers participating in the CEW Recycling Program. As stated in the Problem Statement, non-CRTs are more difficult to dismantle and require longer processing times than CRT devices. Non-CRTs also have less intrinsic material value than CRTs due to miniaturization (for e.g., the

circuit boards are smaller and hence contain fewer precious metals). In addition, they contain residuals that are fully regulated hazardous waste that entail high disposal costs (e.g., plasma panels) or that require special handling (e.g., fluorescent lamps). As non-CRTs are lighter and CEW recycling payments are weight-based, recyclers are paid less for these devices even though they are more costly to manage. Hence, the single recycling payment rate that CalRecycle established at the inception of the CEW Recycling Program proved to be insufficient for non-CRTs.

CalRecycle 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.

### **CONTACT PERSONS**

Inquiries concerning the proposed action may be directed to:

**Matt Sheehan**

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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 and on [the Structure for Pursuing Multiple Covered Electronic Waste Recycling Payment Rates webpage](#). 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), the documents relied upon for the proposed action, and the economic and fiscal impact statement. Copies may be obtained by contacting Matt Sheehan at the address, e-mail, or phone number listed above.

### **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 webinar 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 (FSOR) will be available at the webpage listed herein, or you may contact the individuals listed above.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website titled "Structure for Pursuing Multiple Covered Electronic Waste Recycling Payment Rates" at <https://www.calrecycle.ca.gov/laws/rulemaking/paymentrates>.