

NOTICE OF PROPOSED EMERGENCY ACTION

The Department of Resources Recycling and Recovery (CalRecycle) is proposing emergency regulations to implement the statutory provisions of Public Resources Code (PRC) sections 42464, 42464.2, and 42464.4 that concern covered electronic waste recycling fees paid by consumers at the point of sale of covered electronic devices (CEDs). CalRecycle seeks to maintain the covered electronic waste (CEW) recycling fee levels in Title 14, California Code of Regulations (CCR) section 18660.40.

CalRecycle has complied with the requirement to provide notice of the proposed emergency rulemaking pursuant to Government Code section 11346.1(a)(2).

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6 (Title 1, CCR, section 48).

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to CalRecycle. Written comments which offer recommendations, objections, support, or opposition for the proposed amendment, should indicate the amended section to which the comment or comments are directed.

Comments on the proposed emergency regulations must be submitted directly to OAL within five calendar days of when OAL posts the proposed emergency regulations on the OAL website. If the fifth day falls on a weekend or state holiday, the last day to comment shall be the next business day. Comments on proposed emergency regulations should be submitted to the OAL Reference Attorney by mail to 300 Capitol Mall, Suite 1250, Sacramento, California 95814, by fax to (916) 323-6826, or by e-mail to staff@oal.ca.gov.

When you submit a comment to OAL, you must also submit a copy of your comment to CalRecycle to Regulations@calrecycle.ca.gov or to:

Csilla Richmond
Covered Electronic Waste Recycling Fee
California Department of Resource Recycling and Recovery, Regulations Unit
1001 "I" St., MS-24B, Sacramento, CA 95812.
Phone: (916) 327-0089

OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency regulation currently under OAL review and include the topic of the emergency.

The public comment period will commence on September 19, 2023, when the emergency regulations are posted on OAL's website. The public comment period will close on September 25, 2023. Written comments should be sent to OAL and CalRecycle and received before the close of the public comment period on September 25, 2023. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received after the close of the public comment period will not be considered or responded to in the rulemaking file.

Copies of the text, the Finding of Emergency, and all of the information upon which this proposal is based are available upon request and on our website:

<https://calrecycle.ca.gov/laws/rulemaking/recyclingfee/>. The rulemaking file is also available for review during normal business hours at CalRecycle, 1001 I Street, 9th Floor, Sacramento, California 95814. Please contact the Regulations Unit contact person, Csilla Richmond, at (916) 327-0089 if you wish to review the rulemaking file in person. General or substantive questions regarding this file may also be directed to Ana-Maria Stoian-Chu, at (916) 341-6368. The back-up agency contact person for this rulemaking file is Matt Sheehan, who may be contacted at (916) 341-6344. Any technical inquiries will be referred to the appropriate staff to ensure a prompt response.

Attached to this notice are the proposed regulatory text and the Finding of Emergency. These documents will be posted on CalRecycle's website at the following address: <https://calrecycle.ca.gov/laws/rulemaking/recyclingfee/>.

If you have any questions regarding this proposed emergency action, please contact Csilla Richmond at (916) 327-0089 or Regulations@calrecycle.ca.gov.

FINDING OF NECESSITY/FINDING OF EMERGENCY

CalRecycle finds that an emergency exists to adopt regulations to implement statutory mandates of PRC sections 42464, 42464.2, and 42464.4. The current CEW recycling fee levels in Section 18660.40 of the CCR Title 14 would be maintained in the proposed regulations. Natural Resources, Division 7. Department of Resources Recycling and Recovery, Chapter 8.2. Electronic Waste Recovery and Recycling, Article 2.6.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. (Title 1, CCR, section 48).

The adoption of these regulations is deemed to be an emergency pursuant to PRC section 42475.2.

The CEW Recycling Program was established to provide a funding mechanism for proper end-of-life management of certain video display devices. A recycling fee paid by consumers of CEDs at the time of retail purchase funds the CEW Recycling Program. CalRecycle has the responsibility to assess the adequacy of the CEW recycling fee to generate sufficient revenues to fund the operation and administration of the CEW Recycling Program.

CalRecycle reviewed the existing CEW recycling fee levels and made the determination to maintain the CEW recycling fee at the current rates in each size category:

- **Four dollars (\$4)** for each CED with a screen size of less than 15 inches measured diagonally.
- **Five dollars (\$5)** for each CED with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- **Six dollars (\$6)** for each CED with a screen size greater than or equal to 35 inches measured diagonally.

DOCUMENTS RELIED UPON (Goc. Code §11346.1(b)(2))

- Request for Approval (RFA) executed June 15, 2023 (Exhibit 1)
- RFA Proposed Regulatory Text (Exhibit 2)¹
- Background and Summary of Program Costs and Revenue Need Considerations (Exhibit 3)
- Historical CEW Recycling Claim Volumes (Exhibit 4)
- Fee Model and Analysis (Exhibit 5)
- OAL Notice of Approval of Emergency Regulatory Action (No. 2021-0923-02E) (Exhibit 6)
- Department of Toxic Substances Control Collaboration Email (Exhibit 7)
- STD 399 Economic and Fiscal Impact Statement (Exhibit 8)

AUTHORITY AND REFERENCE (Gov. Code § 11346.5 (a)(2))

CalRecycle adopts these emergency regulations to remain in effect for two years under the authority granted by PRC sections 40502 and 42475.2 and makes reference to specific statutory provisions in PRC sections 42464, 42464.2, and 42464.4.

The Request for Approval executed June 15, 2023, is included as **Exhibit 1**.

INFORMATIVE DIGEST

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (Gov. Code § 11346.5(a)(3))

¹ This document was included as an attachment to the Request for Approval (Exhibit 1). It included section 18660.37, which was unamended. Section 18660.37 is not proposed to be amended as part of this rulemaking, and as such is not included in the Proposed Regulatory text submitted with this rulemaking package.

Existing Laws and Regulations (Gov. Code § 11346.5 (a)(3)(A))

The Electronic Waste Recycling Act of 2003 (PRC section 42460, et seq.) (“the Act”) established a variety of measures intended to develop an infrastructure to provide convenient recycling opportunities, reduce the inappropriate disposal of certain electronic products, limit the sale of certain hazardous products in the state, and require notification and/or reporting of product sale and waste management activities.

The most publicly visible aspect of the Act is the CEW Recycling Program administered primarily by CalRecycle. The CEW Recycling Program is funded through a covered electronic waste recycling fee paid by consumers of CEDs at the time of retail purchase. Accumulated funds are deposited in the Covered Electronic Waste Recycling Fee Subaccount (Subaccount) and used to compensate approved collectors and recyclers of CEW through standard payment rates designed to offset the average net cost of providing recovery and recycling services.

The CEW Recycling Fee (“Fee”) was established by the Act. Pursuant to PRC section 42464(g), CalRecycle has the responsibility to evaluate the program’s revenue needs and to adjust the Fee levels as warranted to maintain fund solvency and ensure continued operation of the CEW Recycling Program.

The adequacy of the Fee may be evaluated by CalRecycle no more frequently than annually, and no less frequently than biennially, and adjusted as warranted. (PRC section 42464(g)). Any necessary adjustments are enacted via CalRecycle’s emergency regulation authority.

The current Fee levels are as follows:

- Four dollars (\$4) for each CED with a screen size of less than 15 inches measured diagonally.
- Five dollars (\$5) for each CED with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- Six dollars (\$6) for each CED with a screen size greater than or equal to 35 inches measured diagonally.

(CCR, Title 14, section 18660.40)

CalRecycle must make necessary determinations regarding the Fee by the statutory date of August 1, and any changes become effective the following January. The RFA to maintain the rates was approved by the Director on June 15, 2023, and presented at the June 2023 Monthly Public Meeting. The existing regulations set forth in section 18660.40 will expire on January 1, 2024 (see Exhibit 6). CalRecycle intends to maintain the current Fee levels, as outlined below in the “**Proposed Regulations**” section. The proposed emergency regulations will be adopted with minimal changes to CCR, section 18660.40.

Evaluation of Compatibility with Existing State Regulations (Gov. Code § 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. There are no other state regulations in existence that deal with the level of consumer fees on CEDs. Thus, there can be no conflict, inconsistency, or incompatibility with other regulations.

Comparable Federal Regulation or Statute (Gov. Code § 11346.5 (a)(3)(B))

CalRecycle has determined that there are no existing, comparable federal regulations or statutes in this subject area and thus this regulation does not have any significant differences from federal law.

Policy Statement Overview and Benefits (Gov. Code § 11346.5 (a)(3)(C))

The Fee was established by the Act. Pursuant to PRC section 42464(g), CalRecycle has the responsibility to evaluate the CEW Recycling Program's revenue needs and to adjust the Fee levels as warranted to maintain fund solvency and ensure continued operation of the program. The objective of the proposed regulation is to maintain the Fee to ensure appropriate revenue levels in the Subaccount and therefore fund the statewide CEW Recycling Program while not charging an excess amount to consumers.

The proposed amendments will provide several benefits. Maintaining the current fee levels will ensure that collectors and recyclers are able to continue providing consumers with opportunities to collect and recycle covered electronic waste. This benefits the environment and public health and safety in that it reduces the amount of electronic waste that gets sent to landfills instead of being recycled or the amount of electronic waste that is improperly managed.

No benefits are anticipated related to the protection of worker safety, the prevention of discrimination, the promotion of fairness or social equity, or the increase in openness and transparency in business and government.

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

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

CalRecycle complied with PRC section 42464(g), requiring it to collaborate with the Department of Toxic Substances Control (DTSC) when reviewing the Fee structure. CalRecycle collaborated with DTSC over email and agreed to keep the current Fee structure (**Exhibit 7**).

MANDATES ON LOCAL AGENCIES AND SCHOOL DISTRICTS (Gov. Code § 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 § 11346.5 (a)(6))

Cost or Savings to Any State Agency

CalRecycle has determined that adoption of these regulations will have no net cost or savings to any state agency. Instead, the Fee levels are set to ensure base solvency for the continued operation of the CEW Recycling Program and maintain a prudent fund balance.

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.*

Non–Discretionary Cost or Savings Imposed Upon Local Agencies

The Department has determined that there are not 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.

Proposed Regulations

Please see **Exhibit 2**. Proposed Title 14, section 18660.40 of the CCR will maintain the Fee at the current rates in each size category:

- Four dollars (\$4) for each CED with a screen size of less than 15 inches measured diagonally.
- Five dollars (\$5) for each CED with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- Six dollars (\$6) for each CED with a screen size greater than or equal to 35 inches measured diagonally.

Based on both historical trends and future projections of income and expenditures, CalRecycle finds that the unchanged Fee structure of \$4, \$5, and \$6 will keep the Subaccount fund to an adequate level over the course of a few fiscal years, while allowing for contingencies in the event of unexpected fiscal developments.