

## REQUEST FOR APPROVAL

**To:** Ken DaRosa  
Acting Director

**From:** Matt Henigan  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** January 7, 2020

**Decision Subject:** Re-adoption of Emergency Regulations Providing a Structure for Pursuing Multiple Covered Electronic Waste Recycling Payment Rates

**Action By:** January 21, 2020

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### **Summary of Request**

Staff seeks approval to file with the Office of Administrative Law (OAL) for re-adoption of existing regulations (Attachment 1) that were previously approved by OAL on May 9, 2018. (See attached OAL's Notice of Approval of Emergency Regulatory Action 2018-0502-04E). These regulations establish the regulatory structure necessary to accommodate a differential recycling payment rate for Cathode Ray Tube (CRT) Covered Electronic Waste (CEW) and non-Cathode Ray Tube (non-CRT) CEW. Attached is the original Request for Approval (RFA), approved April 5, 2018 (Attachment 2), which authorized the initial filing with OAL, along with OAL's Notice of Approval (Attachment 3).

The separate payment rates are necessary because non-CRT devices are more difficult to dismantle and contain less intrinsic material value than CRT devices. CEW recycling payments are weight-based, and since non-CRTs are lighter than CRT devices, recyclers are paid less to cancel these devices even though they are more costly to manage. Due to depletion of legacy CRT CEW, the pounds of non-CRT waste claimed, as a proportion of all CEW claimed, continues to rise. Non-CRT CEW accounts for 29% of the total weight claimed so far in 2019, up from 20% in 2018 and 14% in 2017.

CalRecycle will engage in a final rulemaking effort to finalize these emergency rules, but this formal rulemaking will not be completed prior to expiration of the existing emergency rules that CalRecycle adopted under authority granted in Public Resources Code section 42475.2(b). The existing emergency regulations have only a two-year life span that expires on May 10, 2020. Staff must re-adopt the existing emergency regulations to avoid regulatory lapse. Staff continue to engage with industry to determine if the split is the right payment structure.

Since this request is strictly for re-adoption of existing emergency regulations, there are no changes made to the regulatory text. 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 re-adoption of the emergency regulations that would modify areas within Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations as staff continues the efforts to finalize the rulemaking package.

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## Director Action

On the basis of the information and analysis in this Request for Approval, I hereby approve the staff recommendation to re-adopt the emergency regulations that provide a payment structure for pursuing multiple CEW recycling payment rates with the Office of Administrative Law pursuant to the authority contained in Public Resources Code (PRC) sections 42475 and 42475.2.

**Dated:** January 24, 2020

Signed by Ken DaRosa

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Ken DaRosa  
Acting Director

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Dated

## Attachments

1. Existing Regulations
2. Original RFA (2018)
3. OAL Notice of Approval of Emergency Regulatory Action (2018)

## Background and Analysis

### Statutory Authority

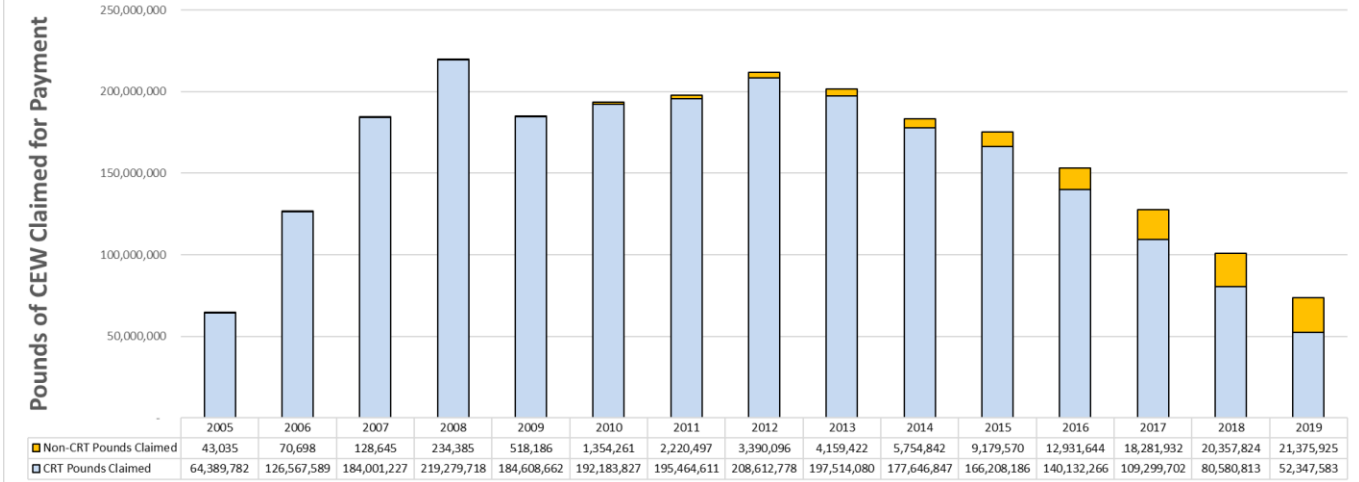
The authority to adopt regulations to implement and administer the Electronic Waste Recycling Act of 2003 is found in PRC § 42475. The proposed regulations were adopted under emergency authority established by PRC § 42475.2 and will be finalized after re-adoption. PRC § 42478 mandates CalRecycle to establish a CEW recycling payment schedule to cover the average net cost for each major category of CEW received, processed, and claimed.

### 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 (CEDs) are video display devices with screen sizes greater than four inches that the Department of Toxic Substances Control (DTSC) has determined to be hazardous when discarded. When CEDs are discarded, they become CEW. Under the CEW Recycling Program administered by CalRecycle, approved collectors document the recovery of eligible 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. Approved recyclers are required to report each year the costs and revenues associated with processing CEW.

Historically, the majority of the CEW material entering into the payment system has been CRTs. As the graph below shows, CRTs remain the predominant stream, but non-CRTs volumes are increasing, becoming a more significant portion of the stream. Non-CRT CEW accounts for 29% of the total weight claimed so far in 2019, up from 20% in 2018 and 14% in 2017.

**Covered Electronic Waste Recycling Payment System  
2005-2019 Pounds of CRT and Non-CRT CEW Claimed for Payment**



**General Intent of the Proposed Rules:**

The management of non-CRT CEW poses numerous challenges to the recycling industry. Non-CRTs are more difficult to dismantle because they require longer processing time and they often have less intrinsic material value than CRTs. In addition, they contain residuals that are fully regulated hazardous waste entailing 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 although they are more costly to manage.

Program staff acknowledges the wide range of technologies within the non-CRT stream (e.g., liquid crystal display televisions, monitors, laptops and tablets, plasma televisions). However, given the complexity of these devices and the lack of sufficient cost data to further differentiate among these technologies, CalRecycle is unable to break this down into more categories at this time. Hence, for the time being, CalRecycle is proposing to treat all these different technologies in one non-CRT category, separate from CRTs.

**Proposed Regulations Main Provisions:**

- Approved recyclers are required to report separately the net cost associated with recycling CRT and with recycling non-CRT CEW (14 CCR § 18660.10);
- Approved recyclers are required to maintain records relative to the management of all CRT and non-CRT CEW that they handle (14 CCR § 18660.21);
- The Standard Statewide Combined Recovery and Recycling Payment Rate is split into separate payments rates for CRT CEW and non-CRT CEW (14 CCR § 18660.34). As the Standard Statewide Recovery Payment Rate covers all CEW, this modification applies only to the recycling payment rate.

**Stakeholder / Staff Discussions:**

Over the course of several years, program staff had several opportunities to engage with stakeholders on the topic of setting multiple recycling payment rates. Program staff has requested industry input through Annual Net Cost reporting to gain an understanding of the specific costs and revenues associated with recycling non-CRT CEW. In 2017, staff embarked on a targeted outreach to recyclers that process non-CRT CEW to learn more about non-CRT operations.

CalRecycle staff hosted a stakeholder workshop on February 12, 2018, to solicit comments on the draft proposed regulatory text. There were no specific comments on the text during or after the workshop. In general, stakeholders supported the proposal and looked forward to the actual determination of the recycling payment rate for non-CRT CEW, which was assessed in May 2018. Since the adoption of the emergency regulations, program staff has continued to engage with industry to determine if the split is the right payment structure.

**Appendix 1**

Year	CRT Pounds Claimed	Non-CRT Pounds Claimed
2005	64,389,782	43,035
2006	126,567,589	70,698
2007	184,001,227	128,645
2008	219,279,718	234,385
2009	184,608,662	518,186
2010	192,183,827	1,354,261
2011	195,464,611	2,220,497
2012	208,612,778	3,390,096
2013	197,514,080	4,159,422
2014	177,646,847	5,754,842
2015	166,208,186	9,179,570
2016	140,132,266	12,931,644
2017	109,299,702	18,281,932
2018	80,580,813	20,357,824
2019	52,347,583	21,375,925