

REQUEST FOR APPROVAL

To: Rachel Machi Wagoner
Director

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

Request Date: April 1, 2021

Decision Subject: Regulations Providing a Structure for Pursuing Multiple Covered Electronic Waste Recycling Payment Rates

Action By: April 20, 2021

Summary of Request

Staff seeks approval to initiate the formal rulemaking process that would finalize existing emergency regulations providing a structure for pursuing multiple Covered Electronic Waste (CEW) recycling payment rates. In May 2018, CalRecycle adopted emergency regulations that split the single CEW recycling payment rate paid to recyclers into separate payment rates for cathode ray tube (CRT) CEW and non-CRT CEW. These regulations established the regulatory structure necessary to accommodate a differential recycling payment rate for non-CRT CEW. The emergency regulations were readopted in May 2020 and expire in May 2022.

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 process these devices even though they are more costly to manage. Due to depletion of legacy CRT CEW, the pounds of non-CRT waste claimed for payment, as a proportion of all CEW claimed for payment, continues to rise. Non-CRT CEW accounted for 40% of the total weight claimed 2020, up from 31% in 2019 and 20% in 2018.

Since this request is for finalizing the emergency regulations currently in place without any further substantial changes, there are no edits made to the existing regulatory text except for three non-substantial (grammatical) changes. The proposed regulations apply to Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations (CCR).

There are three non-substantial changes, solely grammatical in nature, that are marked with underlines in the Proposed Regulations document. The first change is in the title of Article 2.4, making "Rates" plural. The word "the" that was erroneously deleted in the emergency regulations in 2018 is added back to Section 18660.34(a), and "Rate" is correctly changed to "Rates" in Section 18660.34(c).

Background and Analysis

Statutory Authority

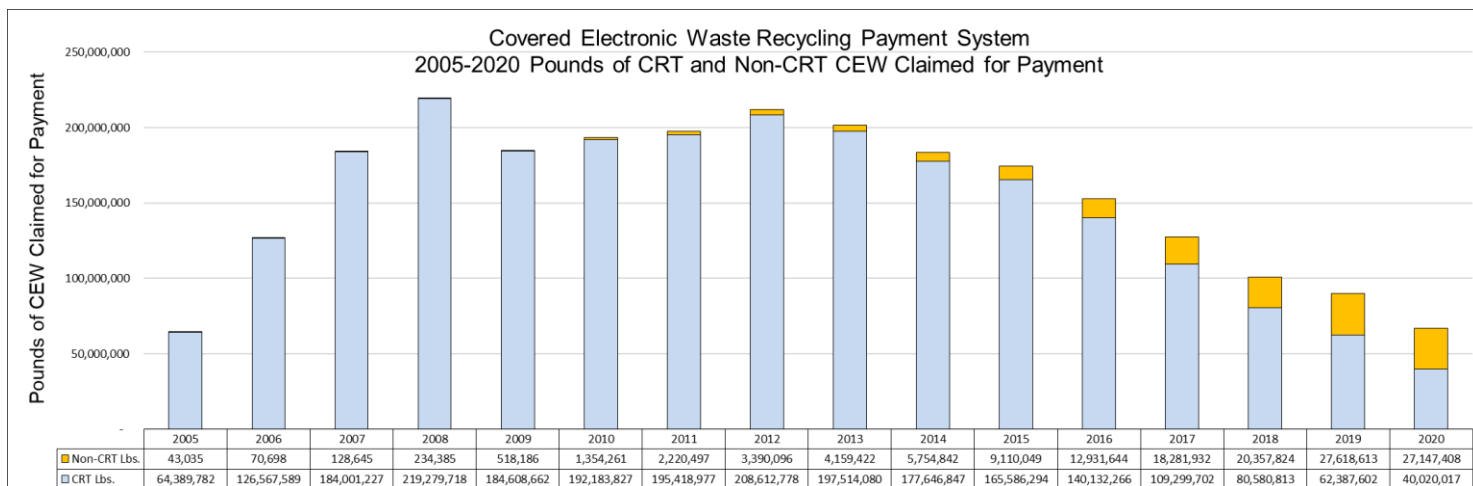
The authority to adopt regulations to implement and administer the Electronic Waste Recycling Act of 2003 (PRC Section 42460, et seq.) is found in Public Resources Code (PRC) Section 42475. The proposed regulations were previously adopted and readopted under emergency authority established by PRC Section 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.

Program Background

The Electronic Waste Recycling Act of 2003 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 as part of the Net Cost Reporting.

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 significant portion of the stream. Non-CRT CEW accounted for 40% of the total weight claimed 2020, up from 31% in 2019 and 20% in 2018.



General Intent of the Proposed Regulations:

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 (e.g., they contain less precious metals). 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, and 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 Section 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 Section 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 Section 18660.34). As the Standard Statewide Recovery Payment Rate paid to approved collectors covers all CEW, this modification applies only to the recycling payment rate paid to approved recyclers.

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.

On February 12, 2018, CalRecycle staff hosted a stakeholder workshop to solicit comments on the proposed emergency regulations. There were no specific comments on the proposed 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.

On February 9, 2021, CalRecycle staff held an informal workshop prior to the initiation of formal rulemaking intended to finalize existing emergency regulations to solicit comments on the proposed regulations. Stakeholders had no concerns with the proposed regulatory text or with making the regulations permanent.

Net Cost Reports

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 the CCR, 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. In 2017, thirteen CRT recyclers and seven non-CRT recyclers provided CalRecycle split Net Cost Reports on a voluntary basis. Since the emergency regulations were adopted in 2018, CalRecycle has required separate CRT and non-CRT net cost calculations.

In terms of reported numbers, program staff has continued to see a significant difference in the net cost per pound to process CRT and non-CRT CEW. In the 2019 Net Cost Reporting, based on the weighted average of all recyclers in the program, the net cost to recycle CRT was 27.7 cents per pound, while the net cost to recycle non-CRT was 40.6 cents per pound.

Payment Rates

Following the establishment of the bifurcated payment rate, CalRecycle took advantage of the 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.

Currently, the Standard Statewide Combined Recovery and Recycling Rate is \$.66/lb. for CRT CEW and \$.87/lb. for non-CRT CEW.

Recommendation

Staff recommends approving the proposed regulations that would finalize existing emergency regulations providing a structure for pursuing multiple CEW recycling payment rates 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 as Attachment 1 to this Request for Approval.

Director Action

On the basis of the information and analysis in this Request for Approval, I hereby approve the staff recommendation to adopt regulations that provide a payment structure for pursuing multiple CEW recycling payment rates and direct staff to prepare documents necessary to perform required analyses and file the proposed regulations with the Office of Administrative Law.

Signed by Rachel Machi Wagoner

Dated: 5/5/2021

Rachel Machi Wagoner
Director

Dated

Attachments

- 1. Proposed Regulations

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	62,690,095	27,630,695
2020*	40,020,017	27,147,408

*Claims for quarter four of 2020 are not complete.