

Covered Electronic Waste Recycling Program Net Cost and Payment Rate Workshop

May 25, 2010

Introduction

The Electronic Waste Recycling Act of 2003 (SB 20, Sher), as amended, 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 covered electronic waste (CEW) recovery and recycling payment system, administered by the Department of Resources Recycling and Recovery (CalRecycle), in partnership with the Department of Toxic Substances Control (DTSC) and the Board of Equalization (BOE). This system is funded through a fee paid by consumers of covered electronic devices at the time of retail purchase, and is operated to compensate authorized collectors and recyclers of CEW through standard payment rates designed to offset the average cost of providing recovery and recycling services.

CalRecycle has the responsibility to evaluate the standard statewide CEW recovery and recycling payment rates every two years and to adjust them as warranted to reflect the average net costs of providing the CEW recovery and recycling services prescribed by the Act. The payment rates have been adjusted only once since the program's operational inception. CalRecycle must now undertake a payment rate evaluation in order to make any adjustments by the statutory date of July 1, 2010.

Background Information

The Electronic Waste Recycling Act of 2003 (Act), commonly referred to as SB 20 [(Sher, 2003), amended by SB 50 (Sher, 2004), and amended by AB 575 (Wolk, 2005)], established a comprehensive program to finance the end-of-life management of certain (covered) electronic devices. The program is financed through an electronic waste recycling fee paid by consumers at the point of retail sale of new covered devices. These revenues are used to administer the programs established by the Act, including the disbursement of recovery and recycling payments to approved collectors and recyclers of covered electronic waste (CEW).

A CEW is a discarded covered electronic device. Covered electronic devices are defined by statute as video display devices with a screen size greater than four inches that are identified by the Department of Toxic Substances Control (DTSC) after testing determines that they are hazardous when disposed.

Currently, covered electronic devices include:

- Cathode ray tubes (CRT) and CRT-containing devices (including CRT televisions and computer monitors);
- Liquid Crystal Display (LCD)-containing televisions and monitors;
- Laptop computers containing LCD screens;
- Gas plasma display televisions; and
- Personal DVD players.

The Act charges CalRecycle with principle responsibility for administering the financial aspects of the CEW payment system. This includes establishing a rate of payment for the proper recovery (collection, consolidation and transportation) and recycling (receipt, processing and disposition) of CEW generated by consumers in California. The recovery payment rate is currently set in regulation at \$0.16 per pound, and the combined recovery and recycling payment is currently set \$0.39 per pound, effectively setting the recycling payment rate at \$0.23 per pound. CalRecycle makes the combined payment to approved recyclers in response to complete and compliant payment claims that document the “cancellation” of eligible CEW. Approved recyclers are in turn required to make the recovery payment within certain timeframes to approved collectors for all eligible and properly documented CEW transferred from the collector to the recycler.

Statutory Requirement for Adjusting Payment Rates

The recovery and recycling payment rates were established at the beginning of the program through a combination of statute and emergency regulation. The rates were set through market research, stakeholder input, and CIWMB consideration, and remained unchanged from January 1, 2005, when eligible recovery and recycling activities began until July 2008. At that point, the California Integrated Waste Management Board (CIWMB) reconsidered the payment rates and determined that an adjustment from a combined \$0.48 per pound to a combined \$0.39 was necessary to better reflect industry reported costs. CalRecycle, as the successor to the CIWMB’s obligations, has the authority and responsibility to revisit and establish new payment rates, as warranted, every two years. Pursuant to statute, CalRecycle must make adjustments on July 1, 2010.

Any adjustment to the recovery and/or recycling payment rates will impact the pace at which the fund is expended and will thus affect the long-term solvency of the program. However, the Act dictates that adjustment of the payment rates be guided by the average net cost of collectors and recyclers providing the services that fulfill the intent of the Act, not as a means to balance the fund. Specifically, the following sections of the Public Resources Code (PRC) will guide the CalRecycle’s analysis:

“PRC 42477. (a) On July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board (CalRecycle) in collaboration with the department (DTSC) shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state....”

“PRC 42478. (a) Except as provided in subdivision (b), on July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board (CalRecycle), in collaboration with the department (DTSC), shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board, of covered electronic waste received from an authorized collector....”

Collaboration with DTSC

As noted above in the statutory citations, CalRecycle is required to make any adjustments to the recovery and/or recycling payment rates in collaboration with DTSC. This collaboration has been accomplished through ongoing coordination and joint implementation of the Act's provisions. Specifically, CalRecycle program staff communicates regularly with DTSC regulatory and compliance staff to discuss program progress and challenges, and to align programmatic efforts.

Public Resources Code (PRC) 42474.4 empowers DTSC to enforce all aspects of the Act and its implementation using DTSC's hazardous waste management authority. Furthermore, PRC 42476(f)(1) states that CalRecycle may pay an electronic waste recycling and/or recovery payment only if "...The covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations," many of which fall under the jurisdiction of DTSC.

Net Cost Reports Inform Payment Rate Considerations

To inform the evaluation of payment rates, regulations governing the payment system allow CalRecycle to require that approved collectors and recyclers submit annual Net Cost Reports documenting revenues and costs associated with the management of CEW during the previous calendar year. The latest cycle of reports was due to CalRecycle on or before March 1, 2010.

(Note: A preliminary analysis of cost data will be presented and discussed at the May 12, 2010, stakeholder workshop, including a comparison to costs reported in 2005, 2006, 2007, and 2008. At the time this background was drafted, program staff was still analyzing the reports that cover operations during 2009.)

Specific regulatory language relating to the Net Cost Report can be found in Title 14 of the California Code of Regulations (CCR) section 18660.10. This regulation provides the context for the Net Cost Report requirement, specifically:

"(a) To adjust the statewide recovery and recycling payment rates, establish future payment schedules and adjust the consumer fees, (CalRecycle) shall periodically update information concerning the net costs of CEW recovery and CEW recycling."

Given the fact that the nature of participating organizations varies considerably based on size, location, business model, target customer base, scope of materials handled, available markets, and other factors, there is a substantial range of costs and revenues reported. This is to be expected. The industry being fostered by the CEW payment system, while not new, continues to evolve as the collection infrastructure evolves, recycling processes are optimized, and markets for derived residuals fluctuate, and as the CEW payment system itself influences how materials flow and business decisions are made.

Findings from the Net Cost Reports covering recovery and recycling operations conducted in 2005 and 2006 indicated that initial recovery and recycling payment rates were more than sufficient to cover the reported costs of a majority of program participants. A continuing trend of lowering net costs was identified in the reports covering 2007, arguing strongly for the reduction in payment rates that occurred in 2008.

Net Cost Report Validation

The CalRecycle electronic waste recycling program has retained the services of auditors from the Department of Finance (DOF) to review the supporting documentation associated with a sampling of submitted Net Cost Reports. In 2008, DOF engaged in a documentation review of approximately a dozen reports representing 2007 recovery and recycling operations. This review conducted onsite at the location of the selected participants, was intended to determine if the revenues and costs reported were substantiated (validated) by available documentation.

The validation exercise was not a standard audit. It involved a records review using procedures agreed upon ahead of time to standardize the outcome. The aim of the exercise was to determine the confidence that the State should have in the general accuracy and reliability of the data submitted as part of the Net Cost Report requirement. Validation subjects were selected by program staff on the grounds that they consisted of a representative range of participant sizes and operational models.

As a result of the 2008 validation exercise, program concluded that the cost and revenue data received through the Net Cost Report could be relied upon as an indicator of overall industry cost when taken in aggregate. Based on the results from the DOF exercise, although any one report may contain errors, the cumulative information in hundreds of reports could provide a reasonably accurate assessment of the industry and its trends.

DOF auditors performed another Net Cost Report support document review in 2009, examining a much larger population of collectors and recyclers. The validation ratings assigned by DOF overall decreased from the previous year, with the auditors noting the following:

- A potential to under-report revenue derived from residual sales
- A potential for related businesses to inaccurately report revenues and/or costs
- The need for more specific guidance on report preparation, especially in the area of cost allocation

CalRecycle revised Net Cost Report guidance material to clarify that generally accepted accounting methods should be used in preparation of reports covering 2009, and reminded participants that the submittal of a false report would be considered a prohibited activity.

DOF is once again performing a review of selected Net Cost Reports submitted this year, the results of which will be factored into any decisions about payment rate adjustments.

The Mechanics and Timing of Adjusting Payment Rates (if necessary)

Any adjustments to the recovery and/or recycling payment rates would be considered regulations under the Administrative Procedures Act (APA). However, CalRecycle is not required to pursue a full public notice and comment rulemaking process, nor would the regulations be subject to substantive review by the Office of Administrative Law (OAL). CalRecycle would be able to file the amended regulations with OAL as a “print only” filing or as an emergency regulation that would become effective either immediately upon filing or at a date certain stated by CalRecycle in the filing. Based on the language of the Act, the earliest effective date for the changes would have to be July 1, 2010.