

Background on Net Cost Reporting and Payment Rate Considerations

Introduction

The Electronic Waste Recycling Act of 2003 (SB 20, Sher), as amended, was a set of targeted approaches within a larger effort to better manage discarded electronic equipment and devices within the state of California. It established a variety of measures intended to develop an infrastructure to provide convenient recycling opportunities, reduce the inappropriate disposal of certain electronic devices, 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 costs of providing recovery and recycling services.

CalRecycle has the responsibility and authority 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 intended and prescribed by the Act. The payment rates have been adjusted only once since the program's operational inception. Presently, any decision to adjust the payment rates must be made by the statutory deadline of July 1, 2014.

Background Information

The Electronic Waste Recycling Act of 2003 (Act), 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 CEW.

CEW are discarded covered electronic devices. Covered electronic devices are defined by statute as video display devices with a screen size greater than four inches that are identified by DTSC after testing determines that they are hazardous when disposed. DTSC must incorporate covered devices in regulation (Title 22, Division 4.5, Chapter 11, Article 5, Appendix X) as well as make ongoing interpretations as new facets and forms of technology are assessed against existing regulation.

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 desktop 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 persons 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 origin and “cancellation” of eligible CEW. Approved recyclers are 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 Authority to Adjust Payment Rates

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

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 budget the fund. Specifically, the following sections of the Public Resources Code (PRC) will guide the CalRecycle’s actions:

“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 in the above 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, to ensure participant compliance, 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.

In October 2012, DTSC enacted emergency regulations that adjusted conditions of authorization within universal waste rules governing the management of discarded cathode ray tubes (CRTs). This was in response to both changing conditions in the market for residual CRT glass as well as further consideration of appropriate material management options. CRT glass management is presently a significant cost concern for CEW recyclers. Thus far the economic impact of this rule change has been negligible since CEW recycling program rules currently limit ultimate CRT disposition options. As DTSC considers finalizing the existing emergency rules, CalRecycle continues to work closely with DTSC to better understand how any new management options for CRT glass may affect overall industry costs.

Net Cost Reports Inform Payment Rate Considerations

To inform the evaluation of payment rates, regulations governing the CEW payment system allow CalRecycle to require that approved collectors and recyclers submit annual Net Cost Reports documenting revenues and costs incurred during the management of CEW within the previous calendar year. The latest cycle of reports was due to CalRecycle on or before March 1, 2014.

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 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. However, the vagaries of self-reporting also suggest that net cost information be considered carefully and in context.