

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2015-0925-02E

For use by Office of Administrative Law (OAL) only

2015 SEP 25 P 3:10  
OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

## AGENCY WITH RULEMAKING AUTHORITY

Department of Resources Recycling and Recovery (CalRecycle)

AGENCY FILE NUMBER (If any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Administrative Civil Penalties	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Title 14, Division 7, Chapter 8.2: Sections 18660.44, 18660.45, 18660.46
	AMEND Title 14, Division 7, Chapter 8.2, Section 18660.7
TITLE(S) 14	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

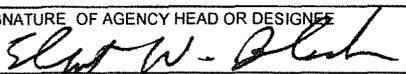
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Elliot Block, Chief Counsel	TELEPHONE NUMBER 916-341-6080	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Elliot.Block@CalRecycle.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 8/21/15
TYPED NAME AND TITLE OF SIGNATORY Elliot Block, Chief Counsel	

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**PROPOSED - California Code of Regulations**  
**Title 14. Natural Resources**  
**Division 7. Department of Resources Recycling and Recovery**  
**Chapter 8.2. Electronic Waste Recovery and Recycling**

For reference, this document shows proposed regulatory revisions and adoptions via underline:

**Article 2.0. Electronic Waste Payment System – Applicability and Limitations, Document Submittals, Records, Audits and Net Cost Report**

**§ 18660.7. Document Submittals.**

- (a) A collector, a recycler, or a manufacturer shall prepare and submit applications, registrations, claims and/or reports required pursuant to this Chapter in the manner designated by CalRecycle.
- (b) CalRecycle shall only accept collector, recycler or dual entity applications, claims and reports containing all the required information and bearing an original signature of the primary applicant, or a person with signature authority as designated by the primary applicant pursuant to Section 18660.11 of this Chapter.
- (c) CalRecycle shall only accept manufacturer registrations, claims and reports containing all the required information and bearing an original signature of the primary registrant, or a person with signature authority as designated by the primary registrant pursuant to Section 18660.35 of this Chapter.
- (d) CalRecycle shall provide forms upon request that may be used to meet the requirements for the applications, registrations, and payment claims specified in this Chapter.
- (e) A collector, a recycler, or manufacturer shall ensure that applications, registrations, claims, reports and all applicable supporting documentation are accurate, complete, and typed or legibly handwritten in English using permanent ink. A collector or a recycler may void errors only by using a single line through the error. A collector or a recycler shall not use correction fluid, correction tape or erasures for correcting errors on any document required by or submitted to CalRecycle.
- (f) Any person, including but not limited to a handler, who provides documentation or information to an approved collector or an approved recycler that may be used by the approved collector or approved recycler pursuant to this Chapter shall not make a false statement or representation in the information or documentation provided.

Note: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42476, 42477, 42478 and 42479, Public Resources Code.

**Article 6. Administrative Civil Penalties**

**§ 18660.44. Procedure for Imposing Civil Liabilities for False Statements or Representations.**

- (a) Administrative civil penalties authorized by Public Resources Code Section 42474(d) shall be assessed in accordance with the procedures set forth in this Section.
- (b) The penalties shall be assessed as follows:
  - (1) A “Minor” violation includes first-time violations where the gravity of the violation is severe. The penalties for this type of violation would be no less than five hundred dollars (\$500) and no more than four thousand dollars (\$4,000).
  - (2) A “Moderate” violation includes subsequent or multiple violations. The penalties for this type of violation would be no less than four thousand dollars (\$4,000) and no more than fifteen thousand dollars (\$15,000).

**PROPOSED - California Code of Regulations**

**Title 14. Natural Resources**

**Division 7. Department of Resources Recycling and Recovery**

**Chapter 8.2. Electronic Waste Recovery and Recycling**

- (3) A "Major" violation includes violations that indicate a pattern and practice of noncompliance, or intentional violations. The penalties for this type of violation would be no less than fifteen thousand dollars (\$15,000) and no more than twenty-five thousand dollars (\$25,000).
- (c) CalRecycle may consider any or all of the following when imposing an administrative civil penalty:
- (1) The nature, circumstances, extent, and/or gravity of the violation;
  - (2) The value of the actual or potential economic benefit to the violator associated with the violation;
  - (3) The amount of actual or potential harm to CalRecycle, financial or otherwise;
  - (4) Any prior history of noncompliance with this Chapter, including but not limited to any prior violations of a similar nature;
  - (5) Truthful and forthright cooperation during any relevant investigation, including but not limited to any measures taken by the violator to remedy the current violation or prevent future violations;
  - (6) The violator's ability to pay the proposed penalty;
  - (7) The deterrent effect that the imposition of the proposed penalty would have on the community as a whole and the violator; and
  - (8) Any other matters that justice may require.
- (d) In any case in which it is determined that more than one person or entity is responsible and liable for a violation, each such person may be held jointly and severally liable for an administrative civil penalty.
- (e) Prior to the imposition of penalties, CalRecycle may issue a prior written notice of violation alleging with specificity:
- (1) A description of the violation or violations;
  - (2) The proposed penalty amount, if any;
  - (3) The facts considered in determining the violation and penalty amount;
  - (4) A list of corrective actions to be taken by the violator; and
  - (5) An acknowledgement of receipt to be executed by the violator.
- (f) CalRecycle may issue an accusation, as defined in Government Code Section 11503, seeking an administrative penalty or penalties pursuant to this Section in lieu of issuing a prior written notice of violation. The accusation and all accompanying documents may be served by personal service or registered mail.
- (g) Within fifteen (15) days after service upon the respondent of the accusation seeking any administrative civil penalty, respondent may request a hearing by filing a Notice of Defense pursuant to Government Code Sections 11505 and 11506. The request for hearing may be made by delivering or mailing the Notice of Defense to CalRecycle. Failure to file a Notice of Defense within fifteen (15) days of service of the accusation shall constitute a waiver of the respondent's right to a hearing and CalRecycle may proceed upon the accusation without a hearing.
- (h) CalRecycle shall provide a hearing before the director or his or her designee, who shall act as hearing officer. At any time during the proceeding, before a decision is issued, CalRecycle and the respondent(s) may engage in settlement of the matter.
- (i) The hearing officer shall consider the notice of violation, the accusation, the Notice of Defense, and all other relevant evidence presented by CalRecycle and the respondent. The hearing officer shall specify relevant procedures to be conducted during the proceeding, which include but are not limited to, informing the parties as to whether the hearing officer will consider witness testimony,

**PROPOSED - California Code of Regulations**  
**Title 14. Natural Resources**  
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**Chapter 8.2. Electronic Waste Recovery and Recycling**

and whether there shall be written and/or oral arguments. The hearing officer shall issue a written decision stating the factual and legal basis for the decision within thirty (30) days of the hearing. If the hearing officer determines that any penalties are owed, the hearing officer shall include in the written decision the date payment of the assessed penalties shall be due and paid.

- (j) The respondent's failure to comply with the hearing officer's written decision may be grounds for suspension or revocation of their status as an approved collector and/or approved recycler.
- (k) Except as otherwise specified herein, the hearing shall be governed by the informal administrative hearing procedures in Government Code Section 11400 et seq. The hearing shall take place in Sacramento, California unless a location is otherwise specified by the hearing officer. If respondent wishes to request an alternate location, the respondent must make that request in the Notice of Defense and provide a justification of undue burden.
- (l) Penalties assessed in a hearing officer's decision may be in addition to any adjustments made pursuant to Section 18660.30 and may be offset by CalRecycle against any other amounts that are otherwise due to the respondent(s) for payment claims. In the event of settlement, the parties may agree to offset provisions in the settlement agreement.

Note: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42476, 42477, 42478 and 42479, Public Resources Code.

**§ 18660.45. Procedure for Imposing Civil Liabilities for Failure to Pay a Covered Electronic Waste Recycling Fee.**

- (a) The administrative procedure set forth in Section 18660.44(c)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(a).
- (b) The hearing shall be governed by the informal administrative hearing procedures in Government Code Section 11400 et seq.

Note: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42476, 42477, 42478 and 42479, Public Resources Code.

**§ 18660.46. Procedure for Imposing Civil Liabilities for Failure to Comply with Requirements for Manufacturers.**

- (a) The administrative procedure set forth in Section 18660.44(b)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(c).
- (b) The hearing shall be governed by the informal administrative hearing procedures in Government Code Section 11400 et seq.

Note: Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference: Sections 42476, 42477, 42478 and 42479, Public Resources Code.

## INFORMATIVE DIGEST/FINDING OF EMERGENCY

### **AUTHORITY AND REFERENCE**

The Department of Resources Recycling and Recovery (CalRecycle) adopts these emergency regulations to remain in effect for two years under the authority granted by the Public Resources Code (PRC) Sections 42474 and 42475.2, and makes reference to specific statutory provisions in Government Code Sections 11445.10, 11445.20, 11503, 11505, and 11506.

The Request for Approval executed August 19, 2015 is included as **Attachment 1**.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### **Existing Laws and Regulations**

The Electronic Waste Recycling Act of 2003 (PRC § 42460, *et seq.*) established a funding mechanism to provide for convenient collection opportunities and waste processing capabilities for certain electronic products discarded in California. Covered electronic devices (CED) include video display devices with screen sizes greater than four inches that have been determined by the Department of Toxic Substances Control (DTSC) to be hazardous when discarded. When CED is discarded, it becomes Covered Electronic Waste (CEW). Approved collectors and approved recyclers may recover, process/recycle, and claim for payment CEW that is documented as having been discarded by a California source and managed compliantly with applicable law.

The program is funded through a fee paid by consumers of CEDs at the time of retail purchase. Collected fees are remitted by retailers to the State Board of Equalization and deposited into the Electronic Waste Recycling and Recovery Account. Subsequently, payments are made to approved CEW collectors and approved recyclers to offset the cost of appropriate waste recovery, processing and recycling activities. CalRecycle administers the CEW payment system. In the ten years since the CEW program began operation, more than 1.8 billion pounds of CEW have been collected, processed, and claimed, representing over 770 million dollars in public funds.

Over the past few years, CalRecycle staff has concentrated on adjustments to payment claims as one of the tools to safeguard compliance with the program's rules and regulations. The average annual disallowance rate has been 5%. Through CalRecycle staff's own payment claim analysis and review of associated documentation, staff has observed that false documentation continues to be submitted in claims for payment filed with the Department. The use of false documentation or information undermines the integrity of the program. Given the need to maintain the integrity of the CEW program and foster compliance, CalRecycle staff is proposing to implement civil liabilities which would offer CalRecycle an additional tool to use in this respect.

CalRecycle was granted statutory authority to administratively impose civil penalties in 2012, as codified in PRC section 42474 (d): "Civil liabilities (penalties) in an amount of up to twenty-five thousand dollars (\$25,000) per violation may be administratively imposed by the Department of Resource Recycling and Recovery against a person, including an authorized collector or covered electronic waste recycler, that makes a false statement or representation in any document filed, submitted, maintained, or used for purposes of compliance" with the Electronic Waste Recycling Act and associated regulations, including those related to the CEW program.

Additionally, PRC sections 42474 (a) and (c) authorize CalRecycle to impose liabilities for the failure to pay the covered electronic waste recycling fee, as well as for manufacturer noncompliance with applicable rules and regulations.

The development of the civil liability rules was approached in two stages: 1) research and evaluation of other similar programs that impose administrative civil penalties to understand how they are authorized, structured, and administered; and 2) drafting and revising the proposed regulations based on feedback from staff and public comments.

CalRecycle staff analyzed various statutes and regulations administered by other programs and agencies such as CalRecycle's Beverage Container, Tire, and Solid Waste Facility Permitting programs, as well as State Water Resources Control Board programs and DTSC programs to evaluate different aspects of a civil penalty approach: scope (e.g., false statement, failure to comply with regulatory requirements and release of hazardous substances), classification of violations, determination of penalty amount, procedures to impose the penalties and timeline. The main challenge was to integrate and adapt the various concepts researched to the needs and specificities of the CEW program and its participants and affiliates. For example, in assessing penalties, the matrix approach used by several programs, which is defined by the extent of deviation and potential harm, was modified to a categorical approach based on frequency of violations, severity, and intent. Also, the concept of "notice of violation" was integrated as a warning mechanism that may be issued prior to the imposition of penalties.

CalRecycle staff conducted a public workshop on the proposed regulations on July 14, 2015. In response to comments received by the stakeholders, CalRecycle revised the regulations.

### **Policy Statement Overview**

The objective of the proposed regulations is to implement a process that allows CalRecycle the ability to exercise its authority and impose civil liabilities against any person, including but not limited to an authorized collector of covered electronic waste recycler, who makes false statements or representations in any document filed, submitted, maintained or used for purposes of compliance with the E-Waste Program.

### **Proposed Regulations**

Please see **Attachment 2**.

### **Federal Regulation or Statute**

CalRecycle has determined that these regulations do not have any significant differences from federal law.

### **FISCAL IMPACT ESTIMATES**

#### **Mandates on Local Agencies and School Districts**

CalRecycle has determined that adoption of these regulations will create no new local mandates.

**Estimate of Potential Cost or Savings to Local Agencies 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.*, or other non-discretionary costs or savings to local agencies or school districts.

**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.

**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.

**EVALUATION OF COMPATIBILITY WITH EXISTING STATE REGULATIONS**

Pursuant to Government Code Section 11346.5(a)(3)(D), CalRecycle performed a search of the existing state regulations and finds that this emergency rulemaking is not inconsistent or incompatible with existing state regulations.

**DOCUMENTS RELIED UPON**

- Request For Approval executed August 19, 2015