

**NOTICE PUBLICATION/REGULATION SUBMISSION**

**FILE PRINT**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2014-0623-01FP</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
		2014 JUN 23 AM 10:30 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY

*Dept. of Resources Recycling and Recovery*

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	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S) <b>Electronic Waste Recycling - Recycling and Recovery Payment Rates</b>	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)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 18660.23, 18660.24, 18660.25, 18660.33, 18660.34
TITLE(S) Title 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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 Resubmittal of disapproved or withdrawn emergency filing (Gov.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 checked="" type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input 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 type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> § 100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>July 1, 2014</b>

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 <b>Harlee Branch, Senior Staff Counsel</b>	TELEPHONE NUMBER <b>916-341-6056</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>harlee.branch@calrecycle.ca.gov</b>
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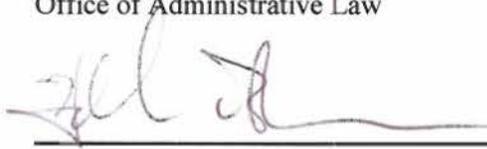
8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Elliot W. Block</i>	DATE <b>6/23/14</b>
TYPED NAME AND TITLE OF SIGNATORY <b>Elliot Block, Chief Counsel</b>	

For use by Office of Administrative Law (OAL) only



## MEMORANDUM

**To:** Office of Administrative Law**Date:** June 23, 2014**From:**  
\_\_\_\_\_  
Harilee Branch, Senior Staff Counsel

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CalRecycle)

**Subject:** STATEMENT OF EXEMPTION FROM CALIFORNIA ADMINISTRATIVE PROCEDURE ACT AS RATE SETTING

The attached regulations, duly adopted by the Department of Resources Recycling and Recovery on June 19, 2014, are being submitted as a “file and print” rulemaking only. Pursuant to Government Code Section 11340.9(g), these regulations are exempt from the California Administrative Procedure Act (“APA”) since they establish and/or fix “rates,” specifically rates of payment for collectors and recyclers of electronic waste. These payment rate regulations establish “a fixed relation of quantity, amount or degree” by setting universal rates that will be paid by the state in relation to the number of pounds of covered electronic waste that are collected or recycled by approved participants in the state’s electronic waste recycling payment system as required by Public Resources Code Sections 42477 and 42478. *See also 20th Century Insurance Co. v. Garamendi*, 8 Cal.4th 216, 32 Cal.Rptr.2d 807 (1994), *Winzler & Kelly v. Dept. of Industrial Relations*, 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (1981), and *Cal. State Outdoor Advertising Assn., Inc. v. State of California*, 2005 WL 2086071 (E.D. Cal., 2005).



**REQUEST FOR APPROVAL (AMENDED)**

**To:** Caroll Mortensen  
Director

**From:** Jeff Hunts  
Manager

**Request Date:** June 13, 2014

**Decision Subject:** Covered Electronic Waste Recovery and Recycling Payment Rates

**Action By:** June 20, 2014

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**Summary of Request:** The Electronic Waste Recycling Act of 2003 (Public Resources Code 42460, et seq) establishes a financing mechanism to develop an infrastructure to provide convenient recycling opportunities and reduce the inappropriate disposal of certain electronic products discarded in California.

Pursuant to PRC 42477 and 42478, CalRecycle has the responsibility to evaluate the standard statewide covered electronic waste (CEW) recovery and recycling payment rates every two years and to adjust them if warranted to reflect the average net costs of providing the CEW recovery and recycling services intended by the Act. CalRecycle must act now to determine whether any payment rate adjustments are necessary in order to meet the statutory date of July 1, 2014.

**Recommendation:** Based on industry cost data reported by participating collectors and recyclers, along with staff analysis, and taking into consideration that there will inevitably be market fluctuations that impact future costs and revenues, staff recommends that the standard statewide recovery payment rate specified in Title 14 of the California Code of Regulations, section 18660.33, and the standard statewide combined recovery and recycling payment rate specified in 14 CCR 18660.34, be increased.

Specifically:

- Staff recommends that the Standard Statewide Recovery Payment Rate, as delineated in 14 CCR 18660.33, should be increased from 16 cents per pound to 18 cents per pound.
- Staff recommends that the Standard Statewide Combined Recovery and Recycling Payment Rate, as delineated in 14 CCR 18660.34, should be increased from 39 cents per pound to 44 cents per pound.
- Staff recommends that these payment rate changes be made immediately, effective July 1, 2014, as applicable to the CEW transfer and/or claim conditions contained in existing associated regulation.
- Staff recommends that the rate increases and effective date be achieved through the applicable edits and amendments to Title 14 of the California Code of Regulation outlined in Attachment 3 of this document.

Upon approval staff will immediately make the necessary filing with the Office of Administrative Law to enact the recommended rate increases.

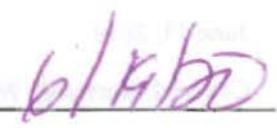
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**Note:** This Request for Approval has been amended to incorporate specific proposed regulatory language necessary for filing with the Office of Administrative Law.

**Director Action:** On the basis of the information, analysis, and findings in this Request for Approval, I hereby approve the staff recommendation that the standard statewide recovery payment rate specified in 14 CCR 18660.33, and the standard statewide combined recovery and recycling payment rate specified in 14 CCR 18660.34 be increased as specified and, in doing so, fulfill CalRecycle's obligations pursuant to PRC 42477 and 42478.



Caroll Mortensen  
Director



Date Signed

**Attachments:**

1. Background on Payment Rate Considerations
2. Detail and Context of 2013 Net Cost Report Analysis
3. Proposed Revised Regulatory Language

**Proposed Revised Regulatory Language  
to Adjust the Covered Electronic Waste Recovery and Recycling Payment Rates**

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

**Article 2.3. Electronic Waste Payment System – Recycling Payment Claims**

**§ 18660.23. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of CRTs or CRT-Containing CEWs through Crushing or Shredding.**

- (a) In addition to the general information required in Section 18660.22 of this Chapter, an approved recycler shall include the information in this Section to claim recycling payments for canceling CRT-containing CEWs through crushing or shredding as specified in Section 18660.32 of this Chapter.
- (b) An approved recycler shall base recycling payment claims on the weight of CRT-containing CEWs cancelled.
- (c) An approved recycler shall submit a recycling payment claim within 45 calendar days of the end of a calendar month in which one or more shipments of CRT glass cullet were sent to an end use destination.
- (d) The reporting month for a recycling payment claim pursuant to this Section is the month in which shipment(s) of CRT glass cullet were made.
- (e) An approved recycler shall calculate the payment and include the calculation in a recycling payment claim specific to canceling CRT-containing CEWs through crushing or shredding as follows:
- (1) The total weight of CRT-containing CEWs cancelled for the reporting month from which all treatment residuals specified in Section 18660.22(c)(1) of this Chapter have been shipped to an end-use destination authorized to receive and further treat those treatment residuals.
  - (2) The total payment claimed, calculated by multiplying the weight of CRT-containing CEWs specified in subsection (e)(1) of this Section by the Standard Statewide Combined Recovery and Recycling Payment Rate.
  - (3) If the amount in subsection (e)(1) of this Section includes CEWs from outside California, CEWs without source documentation, or previously cancelled materials, then the recycler shall reduce the payment claim to reflect these corrections by adjusting the weights.
- (f) An example calculation for canceling CRT-containing CEWs through crushing or shredding is included for illustration purposes as follows:

*The weight of CRT-containing CEWs cancelled:* 1000 pounds  
*Times the per pound Standard Statewide combined recovery and recycling payment rate:*  $X \text{ } \cancel{\$0.39} \underline{\$0.44}$   
*Equals the payment claim for the reporting period:*  $= \cancel{\$390.00} \underline{\$440.00}$  Total Claim

- (g) An approved recycler shall attach to the payment claim the following documentation from all shipments of CRT glass cullet made during the reporting period of a calendar month:
- (1) Shipping reports to end-use destinations, including the names of the shipping recycler and the receiving end-use destination.
  - (2) The date of the shipment and the weight of the CRT glass cullet.
  - (3) Weight tickets of individual shipments of CRT glass cullet.
  - (4) Verification of post cancellation disposition, including:

(A) For shipments by sea, the proof of disposition to an end-use destination shall be the on-board bill of lading and an executed contract or other documentation from the intended recipient of the shipment.

(B) For other shipments, the proof of disposition to an end-use destination shall include a receipt issued by the person receiving the shipment and any applicable bill of lading.

(C) For all shipments of CRT glass cullet, a discussion of the ultimate disposition of the material shipped demonstrating that the disposition is not disposal to land, water or air.

(h) In addition to the documentation required in subsection (g), an approved recycler shall attach to the payment claim a description and qualification of the disposition of other treatment residuals derived from cancellation of the CRT-containing CEWs, including but not limited to metals, plastics, fibers and wood.

Note:

Authority cited:

Sections 40502, 42475(b), and 42475.2, Public Resources Code.

Reference:

Sections 42475(a), 42476, 42477, 42478, and 42479, Public Resources Code.

**§ 18660.24. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of CRTs or CRT-Containing CEWs through Dismantling to a Bare CRT After Relieving the Vacuum.**

(a) In addition to the general information required in Section 18660.22 of this Chapter, an approved recycler shall include the information in this Section to claim recycling payments for canceling CRT containing CEWs through dismantling to a bare CRT after relieving the vacuum as specified in Section 18660.32 of this Chapter.

(b) An approved recycler shall base recycling payment claims on the weight of CRT-containing CEWs cancelled.

(c) An approved recycler shall submit a recycling payment claim within 45 calendar days of the end of a calendar month in which one or more shipments of bare CRTs were sent to an end use destination.

(d) The reporting month for a recycling payment claim pursuant to this Section is the month in which the shipment(s) of bare CRTs were made.

(e) An approved recycler shall calculate the payment and include the calculation in a recycling payment claim specific to canceling CRT-containing CEWs through dismantling to a bare CRT as follows:

(1) The total weight of CRT-containing CEWs cancelled from which all treatment residuals specified pursuant to Section 18660.22(c)(1) of this Chapter have been shipped to an end-use destination authorized to receive and further treat those treatment residuals.

(2) The total payment claimed, calculated by multiplying the weight of CRT-containing CEWs specified in subsection (e)(1) of this Section by the Standard Statewide Combined Recovery and Recycling Payment Rate.

(3) If the amount in subsection (1) of this Section includes CEWs from outside California, CEWs without source documentation, or previously cancelled materials, then the recycler shall reduce the payment claim to reflect these corrections by adjusting the weights.

(f) An example calculation for canceling CRT containing CEWs through dismantling to a bare CRT after relieving the vacuum is included for illustration purposes as follows:

*The weight of CRT-containing CEWs cancelled:* 1000 pounds  
*Times the per pound Standard Statewide combined recovery and recycling payment rate:* X ~~\$0.39~~\$0.44  
*Equals the payment claim for the reporting period:* = ~~\$390.00~~\$440.00 Total Claim

(g) An approved recycler shall attach the following documentation for all shipments of bare CRTs made during the reporting period of a calendar month:

- (1) Shipping reports to end-use destinations, including the names of the shipping recycler and the receiving end-use destination.
- (2) The date of the shipment and the weight of the bare CRTs.
- (3) Weight tickets of individual shipments of bare CRTs.
- (4) Verification of post cancellation disposition, including:
  - (A) For shipments by sea, the proof of disposition to an end-use destination shall be the on-board bill of lading and an executed contract or other documentation from the intended recipient of the shipment.
  - (B) For other shipments, the proof of disposition to an end-use destination shall include a receipt issued by the person receiving the shipment and any applicable bill of lading.
  - (C) For all shipments of bare CRTs, a discussion of the ultimate disposition of the material shipped demonstrating that the disposition is not disposal to land, water or air.

(h) In addition to the documentation required in subsection (g), an approved recycler shall attach to the payment claim a description and qualification of the disposition of other treatment residuals derived from cancellation of the CRT-containing CEWs, including but not limited to metals, plastics, fibers and wood.

Note:

Authority cited:

Sections 40502, 42475(b), and 42475.2, Public Resources Code.

Reference:

Sections 42475(a), 42476, 42477, 42478, and 42479, Public Resources Code.

**§ 18660.25. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of Non-CRT-Containing CEWs.**

(a) In addition to the general information required in Section 18660.22 of this Chapter, an approved recycler shall include the information in this Section to claim recycling payments for canceling non-CRT-containing CEWs through dismantling to a bare panel or crushing/shredding of the entire CEW as specified in Section 18660.32 of this Chapter.

(b) An approved recycler shall base recycling payment claims on the weight of the cancelled non-CRT-containing CEWs.

(c) An approved recycler shall submit a recycling payment claim within 45 calendar days of the end of a calendar month in which it cancels non-CRT-containing CEWs.

(d) The reporting month for a recycling payment claim pursuant to this Section is the calendar month the cancellation occurs.

(e) An approved recycler shall calculate the payment and include the calculation in a recycling payment claim specific to canceling non-CRT-containing CEWs through dismantling to a bare panel or crushing/shredding of the entire CEW as follows:

- (1) The total weight of cancelled non-CRT-containing CEWs for the reporting month from which all treatment residuals specified pursuant to Section 18660.22(c)(1) of this Chapter have been shipped to an end-use destination authorized to receive and further treat those treatment residuals. Note that non-CRT-containing CEWs commingled with other material are ineligible for recycling payment.
- (2) The total payment claimed, calculated by multiplying the weight of non-CRT-containing CEWs specified in subsection (e)(1) of this Section by the Standard Statewide Combined Recovery and Recycling Payment Rate.
- (3) If the amount in subsection (1) of this Section includes CEWs from outside California or previously cancelled materials, then the recycler shall reduce the payment claim to reflect these corrections by adjusting the weights.
- (4) For each cancelled non-CRT-containing CEWs, the recycler shall record and report the manufacturer name, model number, serial number and weight prior to cancellation.
- (f) An example calculation for canceling non-CRT-containing CEWs through dismantling to a bare panel or crushing/shredding of the entire CEW is included for illustration purposes as follows:

*The weight of non-CRT-containing CEWs cancelled:* 1000 pounds  
*Times the per pound Standard Statewide combined recovery and recycling payment rate:*  $X \text{ } \del{\$0.39} \underline{\$0.44}$   
*Equals the payment claim for the reporting period:*  $= \del{\$390.00} \underline{\$440.00}$  Total Claim

- (g) An approved recycler shall attach the following documentation for all shipments of circuit boards from non-CRT-containing CEWs made during the reporting period of a calendar month:
- (1) Shipping reports to end-use destinations, including the names of the shipping recycler and the receiving end-use destination.
  - (2) The date of the shipment and the weight of the circuit boards.
  - (3) Weight tickets of individual shipments of the circuit boards.
  - (4) Verification of post cancellation disposition, including:
    - (A) For shipments by sea, the proof of disposition to an end-use destination shall be the on-board bill of lading.
    - (B) For other shipments, the proof of disposition to an end-use destination shall include a receipt issued by the person receiving the shipment and any applicable bill of lading.
    - (C) For all shipments of non-CRT-containing CEWs circuit boards, a discussion of the ultimate disposition of the material shipped demonstrating that the disposition is not disposal to land, water or air.

(h) In addition to the documentation required in subsection (g), an approved recycler shall attach to the payment claim a description and qualification of the disposition of other treatment residuals derived from cancellation of the non-CRT-containing CEWs, including but not limited to metals, plastics, and fibers.

Note:

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

Reference:  
Sections 42475(a), 42476, 42477, 42478, and 42479, Public Resources Code.

**Article 2.4. Electronic Waste Payment System – Cancellation Methods, Recovery Payment Rate, and Combined Recovery and Recycling Payment Rate**

**§ 18660.33. Standard Statewide Recovery Payment Rate.**

(a) An approved recycler shall pay an approved collector the Standard Statewide Combined Recovery Payment Rate for all CEWs transferred to the recycler that are accompanied by applicable source documentation pursuant to Section 18660.20(h) of this Chapter regardless of the real or anticipated disposition of the CEWs.

(b) Beginning July 1, ~~2008~~2014, the Standard Statewide Recovery Payment Rate is ~~\$0.16~~\$0.18 per pound.

(c) CalRecycle shall review the Standard Statewide Recovery Payment Rate at a public meeting and establish the rate pursuant to Section 42477 of the Public Resources Code.

Note:

Authority cited:

Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference:

Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

**§ 18660.34. Standard Statewide Combined Recovery and Recycling Payment Rate.**

(a) CalRecycle shall pay an approved recycler the Standard Statewide Combined Recovery and Recycling Payment Rate for the weight of CEWs cancelled and claimed pursuant to the requirements of this Chapter, which includes a component for recovery costs and a component for recycling costs.

(b) Beginning July 1, ~~2008 and ending on September 15, 2008~~2014 the Standard Statewide Combined Recovery and Recycling Payment Rate is ~~\$0.43~~\$0.44 per pound.

(c) ~~Beginning September 16, 2008, the Standard Statewide Combined Recovery and Recycling Payment Rate is \$0.39 per pound.~~

~~(d)~~ CalRecycle shall review the Standard Statewide Recovery and Recycling Payment Rate at a public meeting and establish the rate pursuant to Sections 42477 and 42478 of the Public Resources Code.

Note:

Authority cited:

Sections 40502, 42475(b) and 42475.2, Public Resources Code.

Reference:

Sections 42475(a), 42476, 42477, 42478 and 42479, Public Resources Code.

