

**Department of Resources Recycling and Recovery**  
**CalRecycle Informal Hearing Rules Regulations**

**INITIAL STATEMENT OF REASONS**

**INTRODUCTION**

The California Department of Resources Recycling and Recovery (CalRecycle) proposes the adoption of uniform procedures governing its administrative hearings conducted pursuant to Chapter 4.5 of the California Administrative Procedure Act (APA) (Government Code section 11400 et seq.), referred to herein as “informal” administrative hearings.<sup>1</sup> These regulations are necessary to ensure a consistent framework that balances the need for fair treatment of respondents with efficient and cost-effective procedures.

Administrative hearings are a cornerstone of due process, providing individuals, companies, and government entities with the opportunity to review the evidence underlying a CalRecycle decision, present counterevidence, and offer legal arguments. By adopting these regulations, CalRecycle aims to enhance transparency, fairness, and public confidence in its hearing processes.

The proposed regulations incorporate provisions required by the APA and resemble regulations utilized by other state agencies that conduct administrative hearings. They also align with modern best practices for evidentiary hearings, using lessons drawn from research on “Type B” hearings under the federal APA. These best practices are outlined in Professor Michael Asimow’s report, “Evidentiary Hearings Outside the Administrative Procedure Act.” (Admin. Conf. of the U.S., Recommendation 2016-4, 81 Fed. Reg. 94314 (Nov. 10, 2016).)

Additionally, the proposed regulations reflect CalRecycle’s commitment to sustainability and operational efficiency. Innovations such as videoconference hearings and electronic document filing reduce costs, minimize travel burdens, increase accessibility for parties, and foster greater public access.

CalRecycle derives its authority to implement these regulations from several sources, including:

- The California APA, which authorizes agencies to adopt regulations for informal adjudicative proceedings (Gov. Code, § 11400.20, subd. (a)).

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<sup>1</sup> These proceedings are referred to herein as “informal” administrative proceedings or hearings to distinguish them from “formal” proceedings under Chapter 5 the APA. The term is used here to refer to proceedings pursuant to Chapter 4.5 generally rather than only those pursuant to Article 10 of Chapter 4.5 which concerns a subset of hearings.

- The Beverage Container Recycling and Litter Reduction Act (Pub. Resources Code, § 14536, subd. (b)(1)).
- The Integrated Waste Management Act (Pub. Resources Code, § 40502, subd. (a)).

Together, these proposed regulations establish a robust framework for CalRecycle's informal hearings while ensuring compliance with legal standards.

## **PROBLEM STATEMENT**

CalRecycle currently administers multiple programs that provide a right to an informal administrative hearing conducted internally by the Director or their designee. These programs each operate under distinct timelines and procedures, resulting in inconsistent practices and a lack of clarity for participants. Additionally, existing regulations fail to provide clear guidance on critical aspects of the hearing process, such as evidentiary rules, procedural safeguards, and accommodations for individuals with disabilities.

As California advances its circular economy goals, new programs are expected to expand CalRecycle's responsibilities. Many of these programs will require informal administrative hearings to address issues such as disciplinary actions or application denials. Without clear and uniform procedures, there is a risk of inefficiency, inconsistency, and diminished public confidence in the fairness and transparency of the hearing process. The potential for disruption when a regulated entity is exercising their right to due process increases if CalRecycle has to maintain customized timelines and procedures for each individual program.

To address these challenges, CalRecycle proposes adopting a comprehensive and uniform set of informal hearing rules applicable to all programs. These rules are designed to:

- Streamline hearing timelines and procedures across programs.
- Provide clear, consistent guidance for hearing participants on their rights and responsibilities.
- Promote accessibility by establishing rules for accommodations and electronic participation.
- Enhance due process and efficiency while reducing administrative burdens.

To implement these changes, CalRecycle also proposes to amend existing sections of the California Code of Regulations to incorporate the CalRecycle Informal Hearing Rules and eliminate conflicting or redundant procedures and timelines.

## **SPECIFIC PURPOSE AND NECESSITY OF THE PROPOSED REGULATIONS**

### **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

### **CHAPTER 1. GENERAL PROVISIONS**

### **ARTICLE 6. HEARING OFFICE**

#### **SECTION 17063.1 Purpose and Applicability of Regulations**

##### **Subsection (a)**

The purpose of this subsection is to establish the rules for informal hearings under CalRecycle's jurisdiction and provide a formal title, "CalRecycle Informal Hearing Rules," for citation.

This subsection is necessary to create a clear, uniform framework for informal hearings conducted under CalRecycle's authority, as authorized by Government Code section 11400.20. Providing an official title ensures stakeholders can easily identify and reference these rules. Without this provision, the procedural rules governing informal hearings might lack clarity or accessibility, undermining the statutory goal of due process and transparency.

This subsection is similar to other administrative hearing regulations, both formal and informal. (Cal. Code Regs., tit. 1, § 1000; Cal. Code Regs., tit. 10, § 2615.1; Cal. Code Regs., tit. 18, § 30000.)

##### **Subsection (b)**

The purpose of this subsection is to clarify that the CalRecycle Informal Hearing Rules do not apply to formal administrative hearings conducted under Chapter 5 of the APA (Gov. Code, §§ 11500–11530), or to hearings conducted by local enforcement agencies (LEAs) or other local government entities, including appeals of LEA decisions and petitions on LEA orders. This ensures that the proposed regulations are limited to informal administrative hearings under CalRecycle's jurisdiction and do not conflict with existing procedural frameworks governing formal or local hearings.

This subsection is necessary to avoid confusion regarding the scope and applicability of the CalRecycle Informal Hearing Rules. Formal administrative hearings are conducted by administrative law judges (ALJs) employed by the Office of Administrative Hearings (OAH) (Gov. Code, § 11502, subd. (a)), which has its own set of hearing regulations. (Cal. Code Regs., tit. 1, §§ 1000–1050.) Similarly, local hearings conducted by LEAs and local government entities may use distinct statutory and regulatory provisions outside of CalRecycle's jurisdiction.

Appeals of LEA decisions and petitions on LEA orders must also be excluded from these proposed regulations because they involve distinct procedural requirements 44032.) These provisions impose timelines that are incompatible with the processes

outlined in these informal hearing rules. Furthermore, appeals to CalRecycle involve a review of the record from the initial hearing conducted by the LEA, rather than an evidentiary hearing conducted by CalRecycle. As such, these appeals are fundamentally different from the informal hearings governed by these regulations, making it inappropriate to apply the same procedural framework.

Without this provision, stakeholders might incorrectly interpret the rules as applicable to formal administrative hearings, hearings performed by LEAs and local government hearing panels, and LEA appeals and petitions, resulting in procedural confusion and inefficiencies.

### **Subsection (c)**

The purpose of this subsection is to clarify that the CalRecycle Informal Hearing Rules do not apply to emergency decisions and orders. This ensures that parties understand the proposed regulations do not interfere with the expedited procedures required for emergency enforcement actions.

This subsection is necessary to avoid procedural conflicts between the informal hearing rules and requirements for emergency decisions. Emergency actions, such as cease-and-desist orders or temporary suspension orders, are designed to address urgent situations and operate under accelerated timelines to protect public health, safety, or the environment. The processes outlined in these informal hearing rules, which provide for notice, evidence presentation, and deliberation, are not compatible with the rapid resolution required for emergency matters. By explicitly excluding emergency decisions and orders, this subsection ensures that these proposed regulations do not inadvertently delay or obstruct the enforcement of critical emergency measures.

### **Subsection (d)**

The purpose of this subsection is to establish that, in the event of a conflict between this article and a statute, the statute takes precedence. This ensures that the proposed regulations are subordinate to statutory authority.

This subsection is necessary to reinforce the hierarchy of legal authority, ensuring that the proposed regulations comply with applicable statutes and do not inadvertently create inconsistencies. This subsection aligns with similar language used in formal administrative hearing regulations. (Cal. Code Regs., tit. 1, § 1000.)

### **Subsection (e)**

The purpose of this subsection is to clarify that this article governs in the event of a conflict with other regulations governing informal hearing procedures under CalRecycle's jurisdiction, unless another regulation explicitly provides otherwise or requires the hearing to be conducted under Chapter 5 of the Administrative Procedure Act (Government Code sections 11500 through 11530). This ensures that informal

hearings are conducted under a consistent and standardized framework, reducing ambiguity and procedural conflicts.

This subsection is necessary to establish the default applicability of the CalRecycle Informal Hearing Rules to all informal hearings within CalRecycle unless a specific exemption is stated. Because CalRecycle is simultaneously developing and amending regulations across multiple programs, this provision helps maintain procedural clarity and consistency, even during transitional periods. Where necessary, individual program regulations will be revised to reflect exemptions from this default framework.

#### **Subsection (f)**

The purpose of this subsection is to allow individuals to waive procedural rights conferred by this article unless prohibited by law. This flexibility enables respondents to customize the hearing process to their specific needs.

This provision is necessary to implement Government Code section 11415.40, which authorizes the waiver of procedural rights in administrative hearings. Because these regulations include provisions more protective of a person's rights than the minimum required by the APA (Gov. Code, § 11425.10, subd. (b)), an individual could choose to waive additional rights to help a matter proceed more expeditiously. Allowing waivers helps streamline hearings when appropriate, reducing time and costs while maintaining compliance with statutory requirements. Without this provision, respondents might feel burdened by undesired procedures, potentially delaying dispute resolution.

## **SECTION 17063.2 Definitions**

### **Subsection (a)**

The purpose of this subsection is to provide clear and consistent definitions for terms used in this article. These definitions ensure that stakeholders, including respondents, representatives, and hearing officers, interpret key terms uniformly throughout the informal hearing process.

This subsection is necessary to avoid ambiguity and ensure procedural clarity in the CalRecycle Informal Hearing Rules. By defining these terms, the regulations align with Government Code sections 11405.10 through 11405.80, which also provide definitions for administrative hearings. Without these definitions, stakeholders may interpret terms inconsistently, leading to confusion or procedural errors.

### **Subsection (a)(1)**

The purpose of this subsection is to define “business day” as excluding weekends and official state holidays, ensuring consistency in the calculation of deadlines and procedural timelines.

This definition is necessary to provide clarity for determining filing and service deadlines, which are critical for ensuring due process. Without this definition, parties may misunderstand deadlines, resulting in delays or disputes. This definition is consistent with that used by other agencies, such as California Code of Regulations, title 10, section 2696.2, subdivision (j) (“Business day” means each and every day except Saturdays, Sundays, Federal and California State Holidays”).

### **Subsection (a)(2)**

The purpose of this subsection is to define the timeline of when a case begins and ends for the purpose of the proposed regulations. The definition also instructs readers that only matters eligible for an informal administrative hearing under existing law can be considered cases.

This definition is necessary to delineate the scope of the proposed regulations and clarify what constitutes a “case” in the context of informal hearings. It ensures that all parties understand when a case begins and ends, preventing procedural uncertainty.

### **Subsection (a)(3)**

The purpose of this subsection is to create an acronym to use as a shorthand reference for the CalRecycle Hearing Office (CHO) throughout the proposed regulations.

This definition is necessary to simplify the language in the regulations and ensure consistency when referring to the entity responsible for overseeing CalRecycle’s informal hearings.

### **Subsection (a)(4)**

The purpose of this subsection is to define “day” as a calendar day, rather than a business day.

This definition is necessary to clarify how deadlines and timelines are calculated, reducing the risk of misinterpretation or disputes. This definition is consistent with definitions used by other agencies, such as California Code of Regulations, title 8, section 347, subdivision (g) (“ ‘Day’, unless specifically stated otherwise means calendar day”).

#### **Subsection (a)(5)**

The purpose of this subsection is to define the shorthand term “Director” as meaning CalRecycle’s Director.

This definition is necessary to ensure clarity while allowing efficient shorthand terms to be used. This definition is consistent with other definitions used by CalRecycle, such as California Code of Regulations, title 14, section 17943, subdivision (g) (“ ‘Director’ means the Director of the Department of Resources Recycling and Recovery.”).

#### **Subsection (a)(6)**

The purpose of this subsection is to define “discovery” as a more informal procedure in these hearing regulations than in civil court proceedings.

This definition is necessary to clarify that while evidence may be requested and disclosed in CalRecycle’s informal hearings, the process does not involve the expensive and time-intensive procedures associated with civil discovery. Limiting disclosable evidence to material relevant to the case ensures the hearing process remains efficient, cost-effective, and aligned with the informal nature of these proceedings. This clarification is essential to help parties understand their rights and obligations in the discovery process and to avoid procedural disputes.

#### **Subsection (a)(7)**

The purpose of this subsection is to set a broad definition of what constitutes a “document” in a case under these rules. A broad definition ensures that all filings, regardless of format or designation, are uniformly recognized as part of the official case record.

This definition is necessary to clarify the scope of materials considered part of the record, ensuring procedural consistency. By explicitly defining “document,” this provision prevents ambiguity regarding the scope of materials included in the record, thereby facilitating efficient case management and ensuring transparency in future proceedings.

#### **Subsection (a)(8)**

The purpose of this subsection is to explain that the legal term “ex parte communications” means discussions about a case between a party and the presiding officer without notice and opportunity given to other parties.



This definition is necessary to uphold due process and ensure fairness by prohibiting improper communications that could bias the outcome of a hearing.

#### **Subsection (a)(9)**

The purpose of this subsection is to explain when a reason constitutes “good cause” to take a requested action.

This definition is necessary to establish a standard for granting requests, such as continuances or extensions, ensuring consistency and fairness. The definition aligns with that used by California courts. (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1478 [explaining that “good cause” is a “legally sufficient reason.”].) It further aligns with the definition of “good cause” used in small claims proceedings. (Cal. Code Civ. Proc., § 116.130, subd. (j) [“ ‘Good cause’ means circumstances sufficient to justify the requested order or other action, as determined by the judge.”].)

#### **Subsection (a)(10)**

The purpose of this subsection is to explain that a hearing is a part, but not the totality, of a case.

This definition is necessary to clarify that a hearing is part of the case but does not include the components of a case that take place before the hearing, such as prehearing conferences and any motions, or the decision-writing process that takes place after all evidence has been submitted. This definition will help parties understand what the CHO means when using the term “hearing” as opposed to the term “case,” defined above.

#### **Subsection (a)(11)**

The purpose of this subsection is to define the legal term used when a party makes a written or oral request for action by the presiding officer.

This definition is necessary to provide clarity on procedural tools available to parties during the hearing process and how they can make requests during the case. This definition is consistent with the definition of a motion in small claims proceedings, while also allowing oral requests during conferences and hearings. (Cal. Code Civ. Proc., § 116.130, subd. (h) [“ ‘Motion’ means a party’s written request to the court for an order or other action. The term includes an informal written request to the court, such as a letter.”].)

#### **Subsection (a)(12)**

The purpose of this subsection is to define the legal term that verifies a document was served on all other parties in the case. Under section 17063.11, the form of the document will depend on the method of service (i.e., mail, personal service, electronic service, etc.).

This definition is necessary to ensure consistency and accountability in document service, a fundamental aspect of due process, and prevent ex parte communications. It also points a regulated entity to a particular section of these regulations so that they know what to do to comply whenever a Proof of Service is required.

#### **Subsection (a)(13)**

The purpose of this subsection is to define the term used to protect sensitive and confidential information from public disclosure.

This definition is necessary to provide a mechanism for safeguarding confidential or sensitive materials elicited during the hearing process. CalRecycle hearings are open to the public and the evidence offered in hearings is generally available under the Public Records Act. Thus, CalRecycle Hearing Officers must have a means to prevent the disclosure of sensitive information in a hearing because personally identifiable information, trade secrets, ongoing criminal activities, or familial relationships can all be part of an evidentiary record upon which a decision is based.

#### **Subsection (a)(14)**

The purpose of this subsection is to define the scope of materials that comprise a case and ensure clarity in the event a record must be submitted on appeal.

This definition is necessary to ensure clarity on what constitutes the administrative record, which is crucial for decision-making and judicial review. It is also necessary to ensure the exclusivity of the record, meaning that no materials outside of it were considered in rendering a decision. This definition is also consistent with Government Code section 11523, which governs appeals of formal hearings under the APA. ("The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case.")

#### **Subsection (a)(15)**

The purpose of this subsection is to define the scope of what evidence is relevant to a case.

This definition is necessary to establish a clear standard for admitting evidence, ensuring fairness and efficiency in the hearing process. This definition is consistent with California Evidence Code section 210, which defines "relevant evidence" as "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."

#### **Subsection (a)(16)**

The purpose of this subsection is to explain that a “representative” is an adult who is advocating for the interest of a party. An additional purpose is to ensure that interpreters are not perceived to be representing any party in a proceeding.

This definition is necessary to clarify who may represent a party and under what circumstances, promoting procedural fairness. It is consistent with other hearing regulations that allow a party to authorize another person to represent them in the hearing. (See, e.g., Cal. Code Regs., tit. 22, § 120222, subd. (a) [“The complainant shall have the right to appoint an authorized representative during all aspects of the hearing process by signing and dating a written statement to that effect, or by stating on the record at the hearing that the person is so authorized.”].)

#### **Subsection (a)(17)**

The purpose of this subsection is to define a term used to refer to the party who has requested an informal hearing at CalRecycle.

This definition is necessary to specify the role of the respondent in the hearing process, ensuring procedural clarity. This definition is consistent with the definition of “respondent” in a formal APA hearing. (Gov. Code, § 11500, subd. (c) [“ ‘Respondent’ means any person against whom an accusation or District Statement of Reduction in Force is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.”].)

#### **Subsection (a)(18)**

The purpose of this subsection is to define the shorthand term “Rule” as a section of the proposed regulations.

This definition is necessary to ensure clarity while allowing for more efficient terminology in the regulations. This definition is consistent with other agencies that use the term “rule” to refer to individual sections of hearing procedures. (See, e.g., Cal. Code Regs., tit. 8, § 17201.)

#### **Subsection (a)(19)**

The purpose of the subsection is to define the term “service” for those who are not familiar with legal document delivery. Clear guidelines on service are essential to maintain procedural fairness and due process, as they ensure that all parties receive timely and proper notice of case-related filings.

This definition is necessary to eliminate ambiguity about service, reducing the risk of procedural errors that could delay or invalidate proceedings. By explicitly defining “service,” this subsection promotes consistency, compliance with procedural rules, and equitable access to the adjudicative process.

#### **Subsection (b)**

The purpose of this subsection is to clarify that these definitions supplement, rather than replace or conflict with, the definitions included in the APA. (Gov. Code, §§ 11405.10–11405.80.) By explicitly referencing the APA, this subsection reinforces alignment with established statutory definitions while providing additional clarity for terms specific to these proceedings.

This subsection is necessary to promote consistency between the APA and these regulations. It helps prevent potential confusion or misinterpretation by ensuring that stakeholders understand how the defined terms apply within the context of this rulemaking.

## **SECTION 17063.3 Pleadings**

### **Subsection (a)**

The purpose of this subsection is to clarify that the CalRecycle Informal Hearing Rules do not create any new right to a hearing. The proposed regulations only apply to hearing rights provided by other statutes and regulations.

This subsection is necessary to ensure that parties understand CalRecycle's obligations. By explicitly stating that these rules do not create additional hearing rights, the provision aligns with Government Code section 11400.20, which authorizes agencies to establish procedural rules for hearings that are already required by law. This ensures clarity for stakeholders and prevents unwarranted requests for hearings on other disagreements with CalRecycle decisions.

### **Subsection (b)**

The purpose of this subsection is to specify the circumstances under which CalRecycle issues a "statement of issues" to the respondent. This type of pleading is typically issued when an agency is denying a request for a right or privilege not already possessed by the respondent. (See Gov. Code, § 11504.)

This subsection is necessary to delineate the pleading used when an agency denies a right or privilege prior to issuance, compared to the different pleading used when an agency is limiting a right or privilege already possessed or otherwise imposing discipline. As the burden of proof differs in these two types of pleadings, it is important for clear distinctions on when they are to be used.

### **Subsection (b)(1)**

The purpose of this subsection is to set a clear standard that adequately advises a respondent about the laws with which the respondent must demonstrate compliance.

This requirement is necessary to provide respondents with sufficient information to prepare for the hearing and clear guidance on the legal standards they are expected to meet, promoting procedural fairness and efficient case resolution.

Additionally, this requirement aligns with Government Code section 11425.10, which mandates fair notice and procedural rights in administrative hearings. Without this provision, respondents might struggle to adequately prepare their case, potentially compromising the fairness and efficiency of the hearing process.

### **Subsection (b)(2)**

The purpose of this subsection is to specify the party who bears the burden of proof in a hearing on a statement of issues and the standard by which they must carry that burden.

This provision is necessary to align the hearing process with standard administrative law principles, ensuring that respondents demonstrate compliance with applicable statutes and regulations. California Evidence Code requires that the burden of proof be by a preponderance of the evidence unless otherwise provided by law. (Evid. Code, § 115.) It further requires each party to carry the burden of proof for any claim or defense they assert. (Evid. Code, § 500.)

### **Subsection (c)(1)**

The purpose of this subsection is to specify the circumstances under which CalRecycle issues a “statement of charges” to the respondent. For formal administrative hearings, this type of pleading is known as an “accusation,” typically issued when an agency is taking disciplinary action against a respondent. (See Gov. Code, § 11503.) These regulations retitle the pleading as a “statement of charges” to encompass a category that includes multiple types of disciplinary actions with different titles. Examples of those types of actions are listed below to add additional clarity.

This subsection is necessary to delineate the pleading used when an agency is limiting a right or privilege already possessed or otherwise imposing discipline, compared to the different pleading used when an agency denies a right or privilege prior to issuance. As the party who bears the burden of proof differs in these two types of pleadings, it is important for clear distinctions on when they are to be used.

### **Subsection (c)(1)(A)**

The purpose of this subsection is to provide an example of when CalRecycle would issue a statement of charges because the agency seeks to revoke, suspend, limit, or condition a right or privilege already held by a respondent. This provision ensures clarity about the procedural requirements in cases where CalRecycle takes disciplinary action against a respondent.

This subsection is necessary to distinguish disciplinary actions from denials that require a statement of issues. Disciplinary actions involve allegations of noncompliance or violations that must be proven by CalRecycle, necessitating a statement of charges. By including this provision, the regulation ensures that there is clarity about who has the burden of proof under these circumstances.

This subsection is necessary to clarify actions taken to revoke or limit an existing right, as disciplinary actions, must follow the procedural framework requiring a statement of charges. CalRecycle is alleging a violation of statute or regulations and thus bears the burden of proving the violation by a preponderance of the evidence. By including this provision, the regulation ensures that there is clarity about who has the burden of proof under these circumstances.

### **Subsection (c)(1)(B)**

The purpose of this subsection is to provide an example of when CalRecycle should issue a statement of charges because the agency is alleging the respondent committed a violation that entails an administrative civil penalty. This provision ensures clarity about the procedural requirements in cases where CalRecycle takes disciplinary action against a respondent.

This subsection is necessary to clarify that administrative civil penalties, as disciplinary actions, must follow the procedural framework requiring a statement of charges. CalRecycle is alleging a violation of statute or regulations and thus bears the burden of proving the violation by a preponderance of the evidence. By including this provision, the regulation ensures that there is clarity about who has the burden of proof under these circumstances.

#### **Subsection (c)(1)(C)**

The purpose of this subsection is to provide an example of when CalRecycle should issue a statement of charges because it seeks to recover funds previously paid to a program participant. This provision ensures clarity about the procedural requirements in cases where CalRecycle takes disciplinary action against a respondent.

This subsection is necessary to clarify that a statement of charges is required in cases where CalRecycle determines that funds paid to a program participant must be recovered due to noncompliance, overpayment, or other statutory or regulatory violations. CalRecycle is alleging a violation of law or other noncompliance to recover funds and thus bears the burden of proving the violation by a preponderance of the evidence. By including this provision, the regulation ensures that there is clarity about who has the burden of proof under these circumstances.

#### **Subsection (c)(1)(D)**

The purpose of this subsection is to provide an example of when CalRecycle should issue a statement of charges because it seeks to order the respondent to provide funds to a victim to reimburse for losses. This provision ensures clarity about the procedural requirements in cases where CalRecycle takes disciplinary action against a respondent.

This subsection is necessary to address situations where restitution is ordered, whether to CalRecycle, third parties, or other entities harmed by the respondent's actions. Because CalRecycle is alleging a legal violation or other noncompliance that resulted in losses for the respondent to reimburse, CalRecycle has the burden of proof by a preponderance of the evidence. By including this provision, the regulation ensures that there is clarity about who has the burden of proof under these circumstances.

#### **Subsection (c)(1)(E)**

The purpose of this subsection is to provide an example of when CalRecycle should issue a statement of charges because it seeks to remove a respondent from a list of compliant entities or add a respondent to a list of noncompliant entities because of

alleged noncompliance. This provision ensures clarity about the procedural requirements in cases where CalRecycle takes disciplinary action against a respondent.

This subsection is necessary to address actions that could affect a respondent's reputation, eligibility for programs, or ability to conduct business. Inclusion on a noncompliant list, or removal from a compliant list, could have regulatory, financial, or operational consequences. By requiring a statement of charges, this provision clarifies that CalRecycle has to prove the alleged noncompliance by a preponderance of the evidence. By including this provision, the regulation ensures that there is clarity about who has the burden of proof under these circumstances.

### **Subsection (c)(2)**

The purpose of this subsection is to require that the statement of charges be written in ordinary and concise language, clearly describing the acts or omissions with which the respondent is charged. This ensures that respondents have sufficient information to understand the allegations and prepare a defense.

This subsection is necessary to provide procedural clarity and ensure due process for respondents. By requiring plain and concise language, the provision reduces the risk of confusion or misunderstanding, particularly for respondents who may not have legal representation. Clear and accessible language also helps to streamline the hearing process by minimizing disputes over the content of the charges.

Additionally, this requirement aligns with Government Code section 11425.10, which mandates fair notice and procedural rights in administrative hearings. Without this provision, respondents might struggle to adequately prepare their defense, potentially compromising the fairness and efficiency of the hearing process.

### **Subsection (c)(3)**

The purpose of this subsection is to require that the statement of charges specifies the statutes and regulations allegedly violated by the respondent and provides the factual basis for each alleged violation. This ensures that respondents have clear notice of the legal and factual grounds for CalRecycle's action.

This subsection is necessary to uphold procedural fairness by ensuring that respondents understand both the legal standards they are accused of violating and the factual circumstances supporting the allegations. Providing this level of detail is essential for respondents to prepare an informed defense.

Specifying the statutory and regulatory basis for the allegations aligns with the requirements of Government Code section 11425.10, which ensures adequate notice in administrative hearings. Without this provision, respondents might face ambiguity about the nature of the alleged violations, leading to disputes about the sufficiency of notice.

### **Subsection (c)(4)**



The purpose of this subsection is to assign the burden of proof to CalRecycle, requiring it to prove the allegations in the statement of charges by a preponderance of the evidence. This ensures accountability and fairness in the adjudication process.

This subsection is necessary to clarify the standard of proof and the party responsible for meeting it in disciplinary proceedings. California Evidence Code requires that the burden of proof be by a preponderance of the evidence unless otherwise provided by law. (Evid. Code, § 115.) It further requires each party to carry the burden of proof for any claim or defense they assert. (Evid. Code, § 500.)

#### **Subsection (d)**

The purpose of this subsection is to establish the specific requirements that every initiating pleading must fulfill. This ensures uniformity and completeness in the documents issued by CalRecycle in its informal hearings.

This subsection is necessary to provide clear guidance on the essential elements that must be included in statements of issues and charges. By standardizing these requirements, the provision ensures that respondents receive adequate notice of the allegations, legal basis, and procedural rights associated with the hearing. This uniformity promotes procedural fairness and transparency while reducing the risk of omissions or inconsistencies that could lead to disputes or procedural delays.

#### **Subsection (d)(1)**

The purpose of this subsection is to require that statements of issues and charges be served in accordance with section 17063.12, either to the respondent's mailing address on file or electronically with the respondent's consent. This ensures that service is reliable and provides respondents with proper notice of CalRecycle's actions.

This subsection is necessary to ensure proper service of statements while accommodating modern communication methods. Limiting electronic service to cases where the respondent has consented prevents disputes about whether the pleading was received, reducing the risk of procedural delays or challenges. This approach balances efficiency with fairness, ensuring reliable notice in all proceedings.

#### **Subsection (d)(2)**

The purpose of this subsection is to require that statements of issues or charges inform respondents of their right to a hearing and clarify that Chapter 5 of the APA does not apply to the proceeding. This ensures respondents understand the procedural framework governing their case.

This subsection is necessary to implement Government Code section 11425.10, which mandates that agencies provide notice of procedural rights in administrative hearings and a statement about whether APA Chapter 5 applies. (Gov. Code, § 11425.10, subd. (a)(2).) Informing respondents that Chapter 5 of the APA does not apply prevents misunderstandings about the scope of procedural protections and ensures they prepare

for the informal hearing process appropriately. Without this provision, respondents might incorrectly assume that formal APA hearing rules apply, or the hearing will be conducted by ALJs at OAH, leading to confusion or procedural disputes.

### **Subsection (d)(3)**

The purpose of this subsection is to require that statements of issues and charges include a copy of the APA Bill of Rights protections and notice of where they can find the CalRecycle Informal Hearing Rules. This ensures respondents are informed of the procedural rights afforded to them under the law and the specific regulations governing the proceeding.

This subsection is necessary to implement Government Code section 11425.10, which requires agencies to provide clear notice of procedural rights in administrative hearings. Including a copy of the APA section that lists party rights ensures that respondents have immediate access to the specific legal protections and requirements applicable to their case. Additionally, citing the CalRecycle Informal Hearing Rules provides respondents with a reference to the regulations governing the hearing process, promoting clarity and transparency. Without this provision, respondents may lack critical information about their rights and the procedural framework, potentially leading to misunderstandings, inefficiencies, or disputes during the hearing process.

### **Subsection (d)(4)**

The purpose of this subsection is to require that statements of issues and charges include a document for the respondent to use as their “Notice of Defense,” as described in section 17063.4. This ensures that respondents have a clear and accessible way to request a hearing and assert their intent to defend against the allegations.

This subsection is necessary to provide respondents with a standardized and straightforward method for requesting a hearing. Including a “Notice of Defense” form reduces the likelihood of procedural errors by ensuring respondents understand how to assert their rights to contest CalRecycle’s action. Without this requirement, respondents might face uncertainty or inconsistencies in how they can request a hearing.

### **Subsection (e)**

The purpose of this subsection is to allow CalRecycle to file, or permit the filing of, amended or supplemental pleadings at any time before the matter is submitted for decision. This provides flexibility to address new information or correct errors in the pleadings.

This subsection is necessary to ensure that the hearing process can adapt to evolving circumstances, such as the discovery of new evidence or the identification of omissions in the original pleadings. This section is modeled after a similar section applicable to formal administrative hearings. (See Gov. Code, § 11507.) Allowing for amendments or supplemental filings promotes procedural fairness by enabling CalRecycle to present a

complete and accurate case while ensuring respondents are properly notified of any changes to the allegations or issues under review. Without this provision, errors or omissions in initial pleadings could unnecessarily hinder the hearing process.

#### **Subsection (e)(1)**

The purpose of this subsection is to require that all parties receive notice of any amended or supplemental pleadings. This ensures transparency and allows all parties to respond appropriately to any changes in the case.

This subsection is necessary to uphold procedural fairness by ensuring that respondents and other parties are informed of any modifications to the pleadings. Timely notice prevents one-sided advantages and ensures all parties have an equal opportunity to prepare their case. Without this requirement, a party could be unaware of amendments or new allegations, potentially compromising their ability to defend against CalRecycle's action.

#### **Subsection (e)(2)**

The purpose of this subsection is to ensure that respondents are afforded a reasonable opportunity to prepare a defense when amended or supplemental pleadings introduce new charges. It also clarifies that additional hearing days are not required unless ordered by the presiding officer, providing flexibility in managing the hearing process.

This subsection is necessary to balance fairness with efficiency in the hearing process. When new charges are added, respondents must be given adequate time to prepare their defense to uphold due process rights. However, allowing the presiding officer discretion over scheduling additional hearing days ensures that the process remains efficient and avoids unnecessary delays. Without this provision, respondents could be unfairly disadvantaged by a lack of preparation time, or the hearing process could be unnecessarily prolonged, undermining the efficiency of CalRecycle's informal adjudication framework.

#### **Subsection (e)(3)**

The purpose of this subsection is to ensure that any new charges introduced in an amended or supplemental pleading are automatically deemed controverted and that any objections to the amended or supplemental pleading are formally noted in the record. This provision simplifies the procedural handling of new charges and ensures that the respondent's objections are documented.

This subsection is necessary to streamline the hearing process by eliminating the need for respondents to formally deny new charges, thereby saving time and avoiding unnecessary procedural steps. Requiring that objections to amended or supplemental pleadings be noted in the record ensures transparency and preserves the respondent's procedural rights, creating a clear basis for review if the decision is later challenged.

Without this provision, there could be ambiguity regarding how new charges are handled, leading to potential delays or disputes.

## **SECTION 17063.4 Notice of Defense and Notice of Hearing**

### **Subsection (a)**

The purpose of this subsection is to define a “Notice of Defense” as a written document that a respondent submits to request a hearing in response to a section 17063.3 pleading. The Notice of Defense also outlines the defenses, objections, or arguments the respondent intends to raise.

This subsection is necessary to define the function and content of a Notice of Defense. Providing a clear definition helps respondents understand their obligation to submit this document and its role in initiating the hearing. The Notice of Defense is a critical procedural step that enables CalRecycle to identify the issues in dispute and prepare for the hearing accordingly. Without this provision, respondents may lack guidance on how to request a hearing.

### **Subsection (b)**

The purpose of this subsection is to establish a clear process for respondents to request a hearing by filing a Notice of Defense, as well as a standardized timeframe for filing it. The selection of 15 days was made to mirror similar requirements from formal administrative hearings. (See Gov. Code, § 11506, subd. (a).) The provision also provides clarity on where the Notice of Defense should be mailed, ensuring clarity and consistency in filing procedures.

This subsection is necessary to ensure that respondents understand the steps required to exercise their right to a hearing. The 15-day deadline provides a reasonable and standardized timeframe for respondents to act, balancing efficiency in the adjudication process with fairness to the respondent. Requiring the Notice of Defense to be sent to the address specified in the pleading avoids confusion and ensures that CalRecycle receives the document promptly, facilitating timely preparation for the hearing. This timeline was presented at a public workshop on December 11, 2024, and no comments were received about this deadline.

### **Subsection (b)(1)**

The purpose of this subsection is to define when a Notice of Defense is considered filed based on the method of submission and to specify that the right to an informal hearing is waived if the Notice of Defense is not submitted within the specified period.

This subsection is necessary to provide clarity and consistency in determining the timeliness of a respondent’s filing, which is critical to maintaining the efficiency of the informal hearing process. Establishing that a failure to submit a Notice of Defense within the deadline results in a waiver of the right to a hearing ensures that the process proceeds without unnecessary delays or disputes about late filings.

### **Subsection (b)(2)**

The purpose of this subsection is to specify the required content of the Notice of Defense, including the basis for the hearing request, admissions, objections, or defenses to the allegations, respondent and representative contact information, and a certification signed under penalty of perjury.

This subsection is necessary to ensure the Notice of Defense provides sufficient information for CalRecycle to understand the respondent's position, prepare for the hearing, and ensure accountability through certification under penalty of perjury. Clear and complete Notices of Defense promote efficiency by narrowing the issues in dispute and minimizing procedural delays caused by incomplete or vague filings.

#### **Subsection (c)**

The purpose of this subsection is to require respondents to keep the CHO and all other parties informed of their current contact information for service after filing a Notice of Defense. It also mandates that respondents report changes to their contact information within seven days to ensure effective communication throughout the proceeding.

This subsection is necessary to maintain clear and reliable lines of communication between the respondent, CHO, and other parties during the hearing process. Timely updates to contact information prevent delays, missed deadlines, or disputes regarding service of documents, ensuring the process runs smoothly and efficiently.

#### **Subsection (d)**

The purpose of this subsection is to ensure a timely scheduling of the hearing.

This subsection is necessary to promote efficiency and prevent unnecessary delays in the hearing process. By establishing a specific timeframe for CalRecycle to act after receiving the Notice of Defense, the provision ensures hearings are scheduled promptly, respecting the respondent's right to a timely resolution.

#### **Subsection (e)**

The purpose of this subsection is to ensure timely resolution of disputes while providing flexibility when necessary.

This subsection is necessary to balance the need for an efficient adjudication process with the practical realities of scheduling conflicts or unforeseen circumstances. The 90-day requirement promotes fairness by ensuring that respondents receive a hearing within a reasonable timeframe, reducing the risk of prolonged uncertainty. Allowing for waiver by stipulation or continuances for good cause provides flexibility to accommodate the needs of all parties without compromising procedural integrity.

#### **Subsection (f)**

The purpose of this subsection is to require the CHO to assign a hearing officer after receiving a Notice of Defense and to issue a Notice of Hearing to the parties. The

Notice of Hearing ensures all parties receive critical information about the hearing process and scheduling.

This subsection is necessary to provide a clear and orderly process for case management once a Notice of Defense is filed. Assigning a hearing officer ensures that a qualified individual oversees the case and maintains procedural integrity. Issuing a Notice of Hearing provides parties with essential details about the hearing, fostering transparency and allowing them to prepare effectively. The individual requirements within the Notice of Hearing align with those required in formal administrative hearings. (See Gov. Code, § 11509.)

#### **Subsection (f)(1)**

The purpose of this subsection is to require the Notice of Hearing to include the name of the assigned hearing officer, ensuring transparency and informing the parties about who will preside over the case.

This subsection is necessary to identify the hearing officer presiding over the case. Knowing the assigned hearing officer allows parties to prepare appropriately, direct their pleadings, and address any potential conflicts of interest or biases in a timely manner.

#### **Subsection (f)(2)**

The purpose of this subsection is to require the Notice of Hearing to include the date and time of the hearing, and the location if the hearing is in-person. This ensures that all parties have clear and specific information about when and where the hearing will take place.

This subsection is necessary to provide parties with the logistical details needed to prepare for and attend the hearing. Including the date, time, and location ensures transparency and avoids confusion or missed proceedings. For in-person hearings, specifying the location is critical to ensure accessibility for all parties.

#### **Subsection (f)(3)**

The purpose of this subsection is to require the Notice of Hearing to include the contact information for the CHO, including the applicable telephone number. This ensures that parties have a direct means of communication with the CHO.

This subsection is necessary to facilitate effective communication between the parties and the CHO. Providing contact information allows parties to clarify procedural questions, request accommodations, or notify the CHO of updates, ensuring the hearing process runs smoothly.

#### **Subsection (f)(4)**

The purpose of this subsection is to ensure that respondents are aware of their right to obtain legal or other representation during the hearing process. It further clarifies that

respondents do not have a right to free legal representation in a CalRecycle informal hearing.

This subsection is necessary to uphold procedural fairness and ensure respondents understand their right to be represented, which is a fundamental aspect of due process. Explicitly stating this right in the Notice of Hearing provides clarity and helps respondents make informed decisions about how to prepare for the hearing.

#### **Subsection (f)(5)**

The purpose of this subsection is to ensure respondents are aware of their rights to fully participate in the hearing by presenting evidence and cross-examining witnesses offered by CalRecycle.

This subsection is necessary to uphold due process by informing respondents of their procedural rights during the hearing. The ability to present evidence and cross-examine witnesses is critical for ensuring a fair and transparent adjudication process. Including this information in the Notice of Hearing ensures respondents understand the scope of their participation and prevents potential disputes about procedural fairness.

#### **Subsection (f)(6)**

The purpose of this subsection is to require the Notice of Hearing to inform respondents of their right to seek language assistance and disability accommodations. This ensures accessibility and inclusivity in the hearing process.

This subsection is necessary to comply with accessibility requirements and to ensure that all respondents, regardless of language proficiency or disabilities, can fully participate in the hearing process. Providing this information in the Notice of Hearing promotes transparency and ensures respondents know how to request necessary accommodations.

#### **Subsection (f)(7)**

The purpose of this subsection is to require the Notice of Hearing to include information about how to file documents with the CHO. This ensures respondents understand the proper procedures for submitting filings related to their cases.

This subsection is necessary to provide respondents with clear instructions on how to file documents with the CHO, which is essential for maintaining an orderly and efficient hearing process. Proper filing procedures help ensure that all submissions are received and processed timely, reducing the risk of delays or disputes over compliance.

#### **Subsection (g)**

The purpose of this subsection is to require that the Notice of Hearing or Notice of Continued Hearing be served at least 10 days before the hearing unless the party receiving notice waives the requirement. It also clarifies that service is considered



effective if made to the address last provided by the party to the CHO, even if delivery is refused or not accepted at that address.

This subsection is necessary to ensure respondents receive timely and adequate notice of the hearing, allowing them to prepare for and participate in the proceedings. The 10-day notice period upholds principles of due process while accommodating flexibility when the notice period is waived by the party receiving notice. Clarifying that service is effective at the last-provided address, even if delivery is refused or not accepted, prevents respondents from delaying or avoiding the hearing by failing to accept notice. This provision complements subsection (c), which requires parties to update their contact information, further promoting an efficient and fair hearing process.

## **SECTION 17063.5 Representation in Informal Hearings**

### **Subsection (a)**

The purpose of this subsection is to allow respondents to represent themselves in a case or to appear through a representative, who is not required to be an attorney. It also requires that all further communications regarding the proceedings be directed to the representative once representation is established.

This subsection is necessary to clarify the respondent's right to choose their method of representation, which promotes accessibility and flexibility in the hearing process. Allowing non-attorney representatives ensures that respondents who cannot afford legal representation or prefer other forms of support can still participate effectively. Requiring communication to be directed to the representative once established reduces confusion, ensures consistent communication, and respects the respondent's choice of representation.

### **Subsection (a)(1)**

The purpose of this subsection is to prohibit respondents from being represented by an attorney who has been prohibited from practicing law in the State of California.

This subsection is necessary to ensure that respondents are represented only by individuals who meet basic ethical and professional standards. The restriction is necessary based on the holding in *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 70, which prohibits defrocked lawyers from representing parties in state administrative hearings. The language aligns with state law provisions for when it is unlawful for an individual to practice law in the state. (Bus. & Prof. Code, § 6126.) By prohibiting representation by attorneys with serious disciplinary issues, the provision protects the integrity of the hearing process and reduces the risk of harm to respondents caused by inadequate or unethical representation.

### **Subsection (a)(2)**

The purpose of this subsection is to clarify that the respondent's right to representation in the hearing is at their own expense, ensuring there is no expectation that CalRecycle will provide or pay for representation.

This subsection is necessary to establish clear boundaries regarding the financial responsibility for representation. Informing respondents that they must bear the cost of representation ensures transparency and prevents misunderstandings about the scope of support provided by CalRecycle. Without this provision, respondents might incorrectly assume that representation will be provided or subsidized, potentially leading to confusion or delays in securing appropriate representation.

### **Subsection (b)**

The purpose of this subsection is to require respondents who choose to appear through a representative to provide the CHO and all other parties with a written statement authorizing the representation. It also requires the representative to provide their contact information within seven days of assuming representation.

This subsection is necessary to formalize the process for establishing representation, ensuring clarity and accountability in the hearing process. Requiring respondents to authorize their representatives in writing prevents disputes over the validity of the representation, while the contact information ensures effective communication with the representative. These requirements reduce the risk of miscommunication, procedural errors, or delays, thereby promoting an efficient and fair hearing process.

### **Subsection (c)**

The purpose of this subsection is to establish a procedure for representatives to withdraw from representing a respondent. It requires the representative to file a written notice with the CHO and serve a copy on all parties. The notice must also include the respondent's last known contact information.

This subsection is necessary to ensure a clear and orderly process for withdrawing representation, minimizing disruptions to the hearing process. Requiring the representative to notify the CHO and all parties ensures transparency and prevents confusion about the status of representation. Including the respondent's last known contact information allows the CHO and other parties to maintain communication with the respondent, ensuring the case proceeds without unnecessary delays.

### **Subsection (c)(1)**

The purpose of this subsection is to clarify that the respondent assumes full responsibility for their preparation and representation after their representative withdraws, unless and until they retain new counsel or another representative.

This subsection is necessary to ensure that respondents are aware of their responsibility to manage their case after a representative withdraws. It promotes continuity in the hearing process by clearly assigning responsibility to the respondent, reducing the likelihood of delays or procedural disputes. Without this provision, respondents might misunderstand their obligations after a withdrawal.

### **Subsection (c)(2)**

The purpose of this subsection is to clarify that a withdrawal or change of counsel or other representative does not, by itself, constitute good cause for continuing a previously scheduled hearing. This ensures that hearing schedules remain consistent and are not unnecessarily delayed due to changes in representation.

This subsection is necessary to maintain the efficiency and integrity of the hearing process. Without this provision, respondents could potentially use changes in representation as a tactic to delay proceedings, leading to inefficiencies and procedural

disruptions. By clarifying that such changes do not automatically justify a continuance, the provision promotes timely resolution of cases while allowing flexibility for continuances only when genuinely warranted under broader good cause standards.

## **SECTION 17063.6 Presiding Officer**

### **Subsection (a)**

The purpose of this subsection is to establish that all informal hearings will be overseen by a hearing officer designated by the Director, or a person acting in the capacity of the Director. Once assigned, the hearing officer assumes the role of “presiding officer” for the case, ensuring clarity about their authority and responsibilities.

This subsection is necessary to define the structure of oversight in informal hearings and to clarify the hearing officer’s role as the presiding officer. Assigning a specific individual to oversee the hearing ensures consistency, accountability, and procedural fairness. Defining the term “presiding officer” in this context reduces ambiguity and helps all parties understand who is responsible for managing the proceedings and making decisions.

### **Subsection (b)**

The purpose of this subsection is to require that the presiding officer comply with the APA Bill of Rights, which requires separation of functions and disqualification under specified circumstances. This ensures impartiality and fairness in the hearing process.

This subsection is necessary to uphold the integrity of the informal hearing process by preventing conflicts of interest and ensuring the presiding officer remains impartial. Government Code 11425.10 lists nine essential requirements for APA hearings, including the requirement for a separation of functions and disqualification of the presiding officer for bias, prejudice, or interest. These requirements are spelled out in greater detail in Government Code sections 11425.30 and 11425.40. Requiring compliance with these provisions ensures the hearing process adheres to due process standards and maintains public confidence in the fairness of the proceedings.

### **Subsection (c)**

The purpose of this subsection is to clarify that parties do not have the right to peremptory challenges of the presiding officer in informal hearings.

This subsection is necessary to maintain the efficiency of the informal hearing process, particularly given CalRecycle’s limited staffing. With only two hearing officers on staff, one will preside over the hearing while the other is available to assist with confidential settlement conferences if requested by the parties. Granting peremptory challenges without cause for disqualification is not feasible under these constraints. This provision ensures that challenges to the presiding officer are limited to valid legal grounds, such as bias or conflict of interest under Government Code section 11425.40, thereby balancing fairness with operational efficiency.

## **SECTION 17063.7 Ex Parte Communications**

### **Subsection (a)**

The purpose of this subsection is to prohibit ex parte communications with the decision-makers in a case, ensuring impartiality and fairness in the hearing process.

This subsection is necessary to uphold the integrity of the informal hearing process by preventing unauthorized, off-the-record communications that could create the appearance of bias or unfair advantage. Government Code 11425.10 lists nine essential requirements for APA hearings, including the prohibition on ex parte communications, as provided by Government Code sections 11430.10 through 11430.80. This section implements the ex parte prohibition as applied to CalRecycle's informal administrative hearings.

### **Subsection (b)**

The purpose of this subsection is to clarify types of communications that do not qualify as ex parte communications. This ensures parties understand the distinction between permissible and impermissible communications.

This subsection is necessary to provide clarity regarding what constitutes an ex parte communication. By explicitly excluding communications made on the record, the provision ensures that parties can engage in legitimate discussions during conferences or hearings, where all parties have the opportunity to attend and participate, without concern about violating the rules against ex parte communications, even if another party has failed to attend. This provision aligns with the language in Government Code section 11430.10. Further, this provision aids respondents without legal training on what constitutes permissible communication.

### **Subsection (c)**

The purpose of this subsection is to require the presiding officer to promptly notify all parties of any ex parte communication that comes to their attention and provide an opportunity for the parties to respond. This ensures transparency and fairness in the hearing process.

This subsection is necessary to address situations where ex parte communications occur despite being prohibited. Prompt notification and an opportunity to respond protect the integrity of the process by ensuring all parties are aware of and can address any improper communication. This aligns with Government Code section 11430.50, which outlines procedures for handling ex parte communications.

### **Subsection (d)**

The purpose of this subsection is to grant the presiding officer the authority to impose sanctions on any party or interested person who willfully engages in prohibited ex parte

communications. This ensures accountability and deters improper conduct during the hearing process.

This subsection is necessary to enforce the prohibition against ex parte communications effectively. By authorizing the presiding officer to impose sanctions, the provision deters willful violations and reinforces the importance of fairness and impartiality in the hearing process. Sanctions serve as a mechanism to address and remedy misconduct, thereby maintaining the integrity of the proceedings. The subsection does not require sanctions to be imposed because such a measure could be overly punitive, such as in the case of genuine mistakes by self-represented litigants. This provision aligns with Government Code section 11455.10.

### **Subsection (e)**

The purpose of this subsection is to outline circumstances under which a communication that would otherwise be prohibited under subsection (a) is permissible. This ensures clarity about exceptions to the general prohibition on ex parte communications.

This subsection is necessary to provide flexibility and ensure that the prohibition on ex parte communications does not interfere with legitimate and necessary communications in specific circumstances. By delineating permissible exceptions, the provision ensures that parties and the presiding officer can engage in appropriate communications without compromising fairness or due process.

### **Subsection (e)(1)**

The purpose of this subsection is to permit ex parte communications when required for the disposition of an ex parte matter that is specifically authorized by statute. This ensures compliance with statutory exceptions while maintaining fairness in the hearing process.

This subsection is necessary to align the prohibition on ex parte communications with statutory provisions that expressly authorize certain ex parte matters. (See Gov. Code, § 11430.20.) These exceptions allow for efficient handling of specific issues without undermining procedural fairness. By limiting the exception to matters explicitly authorized by statute, the provision ensures that the integrity of the hearing process is preserved while complying with legislative mandates.

### **Subsection (e)(2)**

The purpose of this subsection is to allow ex parte communications that pertain to matters of administration, procedure, or practice, rather than the merits of a case. This ensures that logistical or procedural issues can be addressed efficiently without impacting the fairness of the hearing process.

This subsection is necessary to clarify that certain routine or procedural communications are permissible and do not violate the prohibition on ex parte

communications. Addressing administrative matters outside the hearing context allows for the efficient resolution of issues that do not affect the substantive merits of the case. This exception was listed in Government Code section 11430.20..



## **SECTION 17063.8 Disability Accommodations**

### **Subsection (a)**

The purpose of this subsection is to require that a party, representative, or witness with a disability who needs an accommodation must request the accommodation from the CHO. This ensures that accommodations are provided upon request, enabling full participation in the hearing process.

This subsection is necessary to comply with accessibility requirements under state and federal law, including the Americans with Disabilities Act (ADA). By placing the responsibility for requesting accommodations on the relevant individual, the provision ensures that the CHO is made aware of specific needs and can take appropriate action. Without this requirement, the CHO might not receive timely notice of the need for accommodations, potentially hindering the individual's ability to participate in the hearing and compromising procedural fairness.

### **Subsection (b)**

The purpose of this subsection is to establish that specific definitions apply to the terms used in this section. This ensures clarity and consistency in interpreting and applying the provisions related to accommodations.

This subsection is necessary to provide precise definitions for key terms, reducing ambiguity and ensuring consistent application of the section's requirements. Clear definitions are essential to ensuring all parties, representatives, and witnesses understand their rights and responsibilities regarding accommodations.

#### **Subsection (b)(1)**

The purpose of this subsection is to define "disability" as any mental or physical disability consistent with established legal standards.

This subsection is necessary to provide a clear and legally consistent definition of "disability" for the purposes of requesting accommodations. Referencing Government Code sections 12926 and 12926.1 ensures that the scope of the term is comprehensive and aligns with California's Fair Employment and Housing Act (FEHA).

#### **Subsection (b)(2)**

The purpose of this subsection is to define "accommodations" as reasonable modifications that ensure services, programs, or activities are accessible and usable by persons with disabilities. This definition provides examples, such as procedural changes, assistive devices, or assistive services, to clarify the scope of accommodations.

This subsection is necessary to establish a clear understanding of what constitutes an accommodation in the context of the hearing process. By defining "accommodations" and providing illustrative examples, the provision ensures that individuals with

disabilities are aware of the types of modifications available to support their participation. This aligns with state and federal accessibility requirements, including the ADA.

### **Subsection (c)**

The purpose of this subsection is to provide flexibility in how an individual may request an accommodation, allowing the use of a form provided by the CHO, another written format, or an oral request. This ensures accessibility in the process of requesting accommodations. It also outlines that requests for accommodations must meet specific requirements to ensure clarity and effectiveness.

This subsection is necessary to ensure that individuals with disabilities can easily request accommodations in a manner that suits their circumstances, removing potential barriers to accessing the hearing process. Allowing multiple methods for making requests ensures inclusivity, particularly for individuals who may have difficulty completing written forms. Additionally, requiring specific details in accommodation requests ensures that the CHO has sufficient information to evaluate and implement the requested modifications effectively.

### **Subsection (c)(1)**

The purpose of this subsection is to require that accommodation requests identify the case name and file number. This ensures that the request can be accurately linked to the appropriate case.

This subsection is necessary to ensure that accommodation requests are properly associated with the relevant case. Including the case name and file number allows the CHO to process and implement requests efficiently without confusion or delays.

### **Subsection (c)(2)**

The purpose of this subsection is to require that accommodation requests name the individual with a disability and specify their role in the case. This ensures clarity about who requires the accommodation and their involvement in the hearing process.

This subsection is necessary to provide the CHO with essential information to evaluate and implement the requested accommodation. Identifying the individual and their role ensures that accommodations are tailored appropriately to the specific needs of the person affected.

### **Subsection (c)(3)**

The purpose of this subsection is to require that accommodation requests include a description of the desired accommodation. This ensures that the specific modification or assistance needed is clearly communicated to the CHO.

This subsection is necessary to provide the CHO with sufficient detail to evaluate and implement the requested accommodation effectively. A clear description of the

accommodation helps ensure the request is addressed accurately and in a timely manner, minimizing delays or misunderstandings. Without this requirement, the CHO may lack the information needed to provide the appropriate accommodation, potentially hindering the individual's ability to participate fully in the hearing process.

#### **Subsection (c)(4)**

The purpose of this subsection is to require that accommodation requests include a statement of the impairment that necessitates the accommodation. This ensures that the CHO understands the basis for the request and can assess its validity and relevance.

This subsection is necessary to provide the CHO with context for evaluating the requested accommodation. Identifying the impairment allows the CHO to determine whether the requested modification aligns with the individual's specific needs and complies with accessibility requirements. Without this information, the CHO may struggle to assess or implement accommodations appropriately, potentially resulting in inadequate support or procedural delays.

#### **Subsection (d)**

The purpose of this subsection is to prohibit disability accommodation requests from addressing substantive issues in a legal proceeding and to allow the CHO to request additional information, including medical documentation, to support an accommodation request.

This subsection is necessary to ensure that accommodation requests remain focused on procedural accessibility and do not inadvertently address or influence the substantive legal matters of the case. Limiting requests to procedural issues maintains the impartiality of the hearing process. Allowing the CHO to request additional information or documentation ensures that accommodations are granted based on valid and substantiated needs, promoting fairness and preventing abuse of the process.

#### **Subsection (e)**

The purpose of this subsection is to require the requestor to engage in an interactive process with the CHO to determine what reasonable accommodation, if any, can be provided. The interactive process includes providing additional information and maintaining timely correspondence with the CHO to address the accommodation request effectively.

This subsection is necessary to ensure that accommodation requests are handled collaboratively, allowing the CHO to gather relevant information and explore feasible options for accommodations. The interactive process is a key component of accessibility requirements under the ADA and similar state laws. By requiring timely communication and cooperation, this provision ensures that accommodations are tailored to the requestor's specific needs and implemented without unnecessary delays.

### **Subsection (f)**

The purpose of this subsection is to establish a timeline for submitting accommodation requests to the CHO. It encourages submission as far in advance as possible, with a minimum of 14 days before the accommodation is needed, while also allowing for consideration of late requests and reasonable efforts to provide accommodations when feasible.

This subsection is necessary to provide the CHO with adequate time to evaluate and implement accommodation requests effectively. The 14-day guideline ensures that the CHO can coordinate resources, assess feasibility, and arrange accommodations without unnecessary delays. Allowing for consideration of late requests, while limiting the obligation to cases where implementation is feasible, balances the need for flexibility with operational efficiency. Without this provision, last-minute requests could result in logistical challenges, delaying hearings or potentially leaving individuals without necessary accommodations.

### **Subsection (g)**

The purpose of this subsection is to establish specific grounds on which a disability accommodation request may be denied. This ensures clarity and transparency in the decision-making process.

This subsection is necessary to provide a framework for evaluating and, when appropriate, denying accommodation requests. By clearly articulating the permissible grounds for denial, the provision ensures consistency, fairness, and alignment with legal standards. This clarity helps prevent arbitrary or discriminatory denials while setting reasonable limits to ensure accommodations are feasible and appropriate.

### **Subsection (g)(1)**

The purpose of this subsection is to establish that a disability accommodation request may be denied if it does not satisfy the requirements set forth in this rule.

This subsection is necessary to ensure that accommodation requests provide the information required for the CHO to evaluate and implement them effectively. If a request fails to satisfy the requirements, such as providing the case number, identifying the impairment, or describing the desired accommodation, the CHO may be unable to process it properly.

### **Subsection (g)(2)**

The purpose of this subsection is to allow the denial of a disability accommodation request if providing the accommodation would impose an undue hardship on the CHO. This ensures that the CHO can balance its obligation to provide accommodations with its operational limitations.

This subsection is necessary to align the CHO's accommodation process with established legal standards, including the ADA (28 C.F.R. § 35.164), which allows denial of accommodations that impose undue hardship. "Undue hardship" ensures that accommodations are reasonable and do not place excessive burdens on the CHO's resources or operations. Without this provision, the CHO could be required to provide accommodations that are unfeasible or disproportionately costly.

### **Subsection (g)(3)**

The purpose of this subsection is to allow the denial of a disability accommodation request if providing the accommodation would fundamentally alter the nature of the services being provided. This ensures that accommodations do not compromise the core purpose or function of the hearing process.

This subsection is necessary to maintain the integrity of the hearing process by ensuring that accommodations do not interfere with the essential nature of the services or programs offered by the CHO. Aligning with the ADA (28 C.F.R. § 35.164), this provision recognizes that while accommodations must enable access, they cannot fundamentally change the nature or objectives of the hearing.

## **SECTION 17063.9 Interpreters at Informal Hearings**

### **Subsection (a)**

The purpose of this subsection is to require that the Notice of Hearing inform parties of their right to request an interpreter for themselves or a witness. This ensures effective communication and equal access during the hearing process.

This subsection is necessary to promote fairness and accessibility in the hearing process by ensuring parties and witnesses are aware of their right to request language or sign language interpretation services. Government Code sections 11435.05 and 11435.10 define language assistance under the APA and authorize it to apply to interpretation for individuals who are deaf or hard of hearing under Evidence Code section 754. Although Government Code section 11435.15 does not include CalRecycle in the list of agencies required to provide language assistance in administrative proceedings, CalRecycle currently provides language assistance in its informal administrative hearings and plans to continue the practice. This subsection implements Government Code section 11435.60 by advising parties of their right to language assistance.

### **Subsection (b)**

The purpose of this subsection is to require that requests for an interpreter be submitted to the CHO at least 14 days before the hearing. The request must also provide sufficient information for the CHO to secure an interpreter with the appropriate skills.

This subsection is necessary to ensure the timely and effective provision of interpretation services for hearings. The 14-day timeline allows the CHO adequate time to locate and arrange for a qualified interpreter, especially for less commonly spoken languages where finding an interpreter may require additional time and resources. Requiring sufficient information about the nature of the interpretation ensures the interpreter possesses the appropriate linguistic or technical expertise to facilitate effective communication.

### **Subsection (c)**

The purpose of this subsection is to require that CalRecycle pay the cost of providing an interpreter unless another party should bear the cost based on equitable considerations. This ensures that interpretation services are accessible while allowing for cost allocation adjustments based on fairness.

This subsection is necessary to ensure compliance with Government Code section 11435.25, which requires agencies to pay for interpretation services unless another party is found responsible based on equitable considerations. Defaulting the cost of interpretation to CalRecycle guarantees access to necessary services for parties and witnesses, reducing barriers to participation in hearings. Allowing CalRecycle to seek an alternate cost allocation through a motion ensures flexibility to account for fairness.

### **Subsection (c)(1)**

The purpose of this subsection is to identify the requesting party's ability to pay interpretation costs as an equitable consideration in determining cost allocation. This ensures that interpretation costs are assigned fairly and in alignment with the party's financial capacity.

This subsection is necessary to provide a clear and equitable framework for determining whether the party who requested the interpreter should bear the costs. Considering the party's ability to pay ensures that financial responsibility is allocated fairly, avoiding undue hardship on individuals who may lack the resources to cover interpretation expenses. This approach aligns with the principles of fairness and accessibility under Government Code section 11435.25.

### **Subsection (c)(2)**

The purpose of this subsection is to identify a party's default at a hearing where that party requested an interpreter as an equitable consideration in determining cost allocation. This ensures that interpretation costs can be fairly assigned when a requesting party fails to appear.

This subsection is necessary to address situations where a party who requested an interpreter defaults by failing to appear at the hearing. Allocating interpretation costs to the defaulting party in such cases promotes accountability and prevents unnecessary financial burdens on CalRecycle. This provision aligns with Government Code section 11435.25 by ensuring cost allocation is equitable and reflects the circumstances of the proceeding.

### **Subsection (c)(3)**

The purpose of this subsection is to include a party's late request to withdraw a case or continue a hearing (i.e., fewer than two business days before the hearing at which the party requested an interpreter) as an equitable consideration in determining cost allocation. This encourages timely communication to avoid unnecessary costs.

This subsection is necessary to discourage late cancellations or continuance requests that result in avoidable expenses for interpreter services. Under CalRecycle's current interpreter contract, CalRecycle remains responsible for payment when cancellations occur less than two business days before the hearing. By allowing CalRecycle to allocate interpretation costs to the party making the late request, this provision promotes accountability and encourages parties to notify the CHO as early as possible when a continuation is needed. Without this measure, public funds could be wasted on services that are not needed.

### **Subsection (d)**

The purpose of this subsection is to require that interpreters used at hearings have no interest in the case. This ensures impartiality and maintains the integrity of the hearing process.

This subsection is necessary to prevent conflicts of interest that could compromise the fairness and credibility of the hearing process. An interpreter with an interest in the case might intentionally or unintentionally influence the proceedings through biased interpretation, undermining due process. By requiring interpreters to remain neutral, this provision aligns with Government Code 11435.65, which prohibits interpreters from having any involvement in the issues of the case prior to the hearing, without limiting an interpreter from providing language assistance in both a prehearing conference and the hearing itself.

#### **Subsection (e)**

The purpose of this subsection is to require interpreters at hearings to be sworn by oath or affirmation to perform their duties truthfully. The sample oath or affirmation ensures interpreters understand and commit to their ethical and professional responsibilities.

This subsection is necessary to uphold the accuracy and integrity of interpretation services during hearings. Requiring interpreters to take an oath or affirmation ensures they are aware of their duty to provide faithful and unbiased translations of both spoken statements and documents. The specific language of the oath comes from the regulation governing interpreter oaths in formal administrative hearings, California Code of Regulations, title 1, section 1032.



## **SECTION 17063.10 Filing of Documents**

### **Subsection (a)**

The purpose of this subsection is to establish that, unless otherwise specified in this article, the filing of any document with the CHO must comply with the requirements set forth in the subsequent provisions. This ensures consistency and clarity in filing procedures.

This subsection is necessary to provide a standardized framework for filing documents with the CHO, promoting efficiency and ensuring that all parties follow consistent procedures. By creating a default rule for document filing, the provision minimizes confusion and reduces the likelihood of procedural errors.

#### **Subsection (a)(1)**

The purpose of this subsection is to require that documents be filed with the CHO by electronic means unless the filing party is unable to do so. It also specifies that the original document does not need to be filed unless ordered by the presiding officer. The CHO is responsible for providing electronic submission instructions in the Notice of Hearing.

This subsection is necessary to streamline the document filing process by promoting electronic submissions, which enhance efficiency, reduce costs, and minimize environmental impacts. Allowing exceptions for parties unable to file electronically ensures accessibility and fairness for all participants. Clarifying that original documents need not be filed unless ordered prevents unnecessary duplication and administrative burden. Requiring the CHO to include electronic submission instructions in the Notice of Hearing ensures that all parties have clear guidance on how to comply with filing requirements.

#### **Subsection (a)(2)**

The purpose of this subsection is to establish the filing dates for documents delivered to the CHO by various methods. It specifies that documents sent by the U.S. Postal Service are deemed filed on the business day they are received, while documents hand-delivered or received electronically during regular business hours (8 a.m. to 5 p.m.) are deemed filed on the date received. Documents received after regular business hours are deemed filed on the next business day.

This subsection is necessary to provide clear and consistent rules for determining the filing date of documents, reducing ambiguity and potential disputes. The provision ensures that all parties understand how the timing of their submissions affects compliance with deadlines, which is critical for maintaining procedural fairness and efficiency. By distinguishing between filing methods and accounting for business hours, the provision accommodates various filing practices while ensuring an orderly process.

### **Subsection (b)**

The purpose of this subsection is to require that, by filing a document with the CHO, a party or representative certifies certain statements in good faith. This establishes accountability and ensures the integrity of filed documents.

This subsection is necessary to promote transparency, accuracy, and responsibility in the filing of documents. Modeled after Rule 11 of the Federal Rules of Civil Procedure, the certification requirement deters frivolous, misleading, or improperly prepared submissions that could disrupt or delay the hearing process. It serves as an assurance that parties and representatives are adhering to procedural rules and acting with due diligence and integrity.

#### **Subsection (b)(1)**

The purpose of this subsection is to ensure that filings are submitted with awareness of their contents.

This subsection is necessary to promote accountability and ensure that parties and representatives take responsibility for the content of the documents they submit. By certifying that the document has been read, the filer demonstrates diligence and reduces the likelihood of submitting incomplete, erroneous, or frivolous filings.

#### **Subsection (b)(2)**

The purpose of this subsection is to require that a party or representative certifies that the document being filed is not being submitted for any improper purpose.

This subsection is necessary to safeguard the fairness and efficiency of the hearing process by deterring abusive practices, including frivolous filings and procedural misconduct. By discouraging improper conduct, this provision helps prevent unnecessary delays, wasted resources, and increased litigation costs, thereby preserving the integrity of the adjudicative process.

#### **Subsection (b)(3)**

The purpose of this subsection is to require that a party or representative certifies that any legal claims in the document are consistent with existing law or represent a good-faith argument for changing existing law.

This subsection is necessary to uphold the integrity of the hearing process by discouraging baseless or frivolous legal claims. This requirement prevents unnecessary litigation, conserves resources, and ensures a focus on substantive issues.

#### **Subsection (b)(4)**

The purpose of this subsection is to require that, by filing a document with the CHO, a party or representative certifies that any factual claims in the document have evidentiary support or are likely to have evidentiary support. This ensures that factual assertions are made responsibly and in good faith.

This subsection is necessary to maintain the integrity of the hearing process by preventing the submission of documents containing unsupported or speculative factual claims. By deterring frivolous or unsubstantiated factual assertions, this provision reduces unnecessary disputes and procedural delays, promoting efficiency and fairness in the hearing process.

## **SECTION 17063.11 Proof of Service**

### **Subsection (a)**

The purpose of this subsection is to require that each document filed with the CHO be accompanied by proof of service on all parties or their representatives of record. This ensures that all parties are properly served and prevents ex parte communications.

This subsection is necessary to ensure fairness and transparency in the hearing process by confirming that all parties have received copies of filed documents. Proof of service not only establishes that parties were properly notified but also serves as a safeguard against ex parte communications by documenting that all parties were included in the exchange. Requiring specific information in the proof of service prevents disputes regarding proper notice and ensures compliance with procedural requirements. This section was designed to align with the proof of service regulation for formal administrative hearings. (See Cal. Code Regs., tit. 1, § 1108.)

### **Subsection (a)(1)**

The purpose of this subsection is to require that, when service is made by personal delivery, the proof of service declaration includes the date and place of delivery, the name of the recipient, and, if the recipient's name is unavailable, a physical description as a substitute. This ensures clear documentation of personal service.

This subsection is necessary to provide a detailed and verifiable record of personal delivery, ensuring that service can be confirmed and reducing the risk of disputes over whether documents were properly served. Requiring information about the date, place, and recipient of delivery promotes transparency and accountability in the service process. Allowing a physical description as a substitute for the recipient's name accommodates situations where the name is unavailable, while still ensuring that the delivery is sufficiently documented.

### **Subsection (a)(2)**

The purpose of this subsection is to list the requirements for proof of service when service is made by mail or overnight delivery. This ensures proper documentation of this method of service.

This subsection is necessary to provide a detailed and verifiable record of service made by mail or overnight delivery. Requiring information about the date, place, recipient, and postage ensures that service can be confirmed and prevents disputes over whether documents were properly mailed. Documenting that postage was fully prepaid and the envelope was sealed confirms that the mailing process met procedural requirements.

### **Subsection (a)(3)**

The purpose of this subsection is to list the proof of service requirements for when service is made electronically. This ensures proper documentation of electronic service.

This subsection is necessary to provide a clear and verifiable record of service made electronically, ensuring that all parties are properly notified and that electronic service complies with procedural requirements. Including the sender's and recipient's names and email addresses confirms the identities of those involved, while the date sent establishes when service occurred. This level of detail prevents disputes over whether electronic service was properly executed.

#### **Subsection (a)(4)**

The purpose of this subsection is to require that the proof of service be signed by the person making the service and include a declaration under penalty of perjury. The declarant must certify the information provided is true and correct, specify the place and date of execution, and include their typed and signed name.

This subsection is necessary to establish the authenticity and reliability of the proof of service. Requiring a declaration under penalty of perjury holds the person making the service accountable for the accuracy of their statements, deterring false or negligent submissions. Including the date and location of execution provides additional verification of the declaration's validity. Requiring the declarant's name to be typed and signed ensures clarity about the individual responsible for the service.

#### **Subsection (b)**

The purpose of this subsection is to clarify that proofs of service prepared in accordance with California Code of Civil Procedure section 1013a satisfy the requirements of this section. This provision ensures that parties familiar with court procedures can follow the same standards for proofs of service used in civil actions.

This subsection is necessary to provide clarity and consistency for parties and representatives who are accustomed to the procedural rules of California courts. Referencing section 1013a streamlines the process by allowing those familiar with court practices to use the same format and standards for proofs of service in hearings before the CHO. This reduces confusion, promotes efficiency, and avoids unnecessary procedural complexity.

## **SECTION 17063.12 Service Requirements**

### **Subsection (a)**

The purpose of this subsection is to permit service of documents by any method authorized under the California Code of Civil Procedure or by the methods specifically outlined in this article. This provides flexibility and ensures parties can utilize familiar, legally recognized service methods.

This subsection is necessary to establish a comprehensive framework for serving documents in hearings before the CHO. By allowing the use of service methods authorized under the California Code of Civil Procedure, this provision aligns with established legal standards, promoting consistency and clarity for parties familiar with court procedures. Additionally, including alternative methods of service ensures accessibility and accommodates modern practices, such as electronic service.

### **Subsection (a)(1)**

The purpose of this subsection is to define the requirements for service by personal delivery, specifying that service is complete when the document is handed to an adult at the residence or business of the person being served.

This subsection is necessary to provide clarity and consistency in the use of personal delivery as a method of service. By specifying the location and the age requirement for the individual receiving the document, the provision ensures that service is conducted in a reliable and verifiable manner. This rule aligns with established legal standards, such as the personal service regulation used in formal administrative hearings (Cal. Code Regs., tit. 1, § 1008) and reduces the risk of disputes over whether personal delivery was properly executed.

### **Subsection (a)(2)**

The purpose of this subsection is to define the requirements for service by mail, specifying that service is complete when the document is deposited in the mail with postage prepaid, addressed to the recipient's last known address. This ensures clarity and flexibility in the use of mail-based service methods.

This subsection is necessary to implement Government Code section 11440.20, which permits service by mail in administrative proceedings. Requiring service to the recipient's last known address minimizes the risk of undeliverable mail and ensures proper notification. By deeming service complete upon deposit in the mail, the rule provides a clear and predictable standard, reducing disputes over the timing and validity of service. The provision does not add additional response time based on the method of service, ensuring all participants can easily calculate deadlines without unnecessary complexity or confusion over timing.

### **Subsection (a)(3)**

The purpose of this subsection is to define the requirements for service by overnight delivery. This provides clarity and reliability for using overnight delivery as a service method.

This subsection is necessary to provide a clear and consistent standard for completing service by overnight delivery. Requiring that the document be sent to the recipient's last known address ensures proper notification and reduces the risk of undeliverable mail. By deeming service complete at the time of deposit with the carrier, the rule provides predictability and efficiency in calculating deadlines, avoiding the need for additional response time. This approach simplifies the process for all parties and ensures that overnight delivery remains a reliable and efficient service method.

#### **Subsection (a)(4)**

The purpose of this subsection is to establish requirements for electronic service. Additional requirements ensure the e-mail includes the sender's contact information, identifies the case, and briefly describes the document. The provision also sets a limit on the size of an email to ensure deliverability.

This subsection is necessary to facilitate efficient and modern communication methods in the service of documents. Electronic service provides a fast and cost-effective option, aligning with current practices and technological advancements. Requiring recipient consent ensures fairness and prevents issues with improper service to parties unable to use electronic communication. The additional requirements for e-mail content ensure clarity, helping recipients identify the case and document without confusion. The 25-megabyte size limit prevents delivery failures due to overly large files and aligns with the limits set by other agencies. (See, e.g., Cal. Code Regs., tit. 1, § 6.5, subd. (b)(3).) By deeming service complete upon sending, this provision simplifies the process and avoids disputes over timing.

#### **Subsection (b)**

The purpose of this subsection is to require parties who consent to electronic service to monitor their e-mail accounts and to notify the CHO and all other parties if they revoke their consent. This ensures clear communication and accountability in the electronic service process.

This subsection is necessary to establish the responsibilities of parties who opt for electronic service. Requiring parties to monitor their e-mail accounts ensures they promptly receive and review served documents, avoiding unnecessary delays or missed deadlines. The provision for written notification of revoked consent creates a clear and formal process for transitioning from electronic to another method of service, preventing confusion or disputes.

#### **Subsection (c)**

The purpose of this subsection is to require that service on a party appearing through a representative be made on the representative. This ensures proper communication and compliance with procedural norms.

This subsection is necessary to clarify that when a party is represented, all service must be directed to their representative to maintain orderly and effective communication. Serving the representative ensures that the party's chosen legal or authorized representative receives all necessary documents and notices, avoiding confusion or missed communications. This provision aligns with established legal practices in administrative proceedings. (Gov. Code, § 11440.20, subd. (a).)

#### **Subsection (d)**

The purpose of this subsection is to establish that actual receipt of a document waives any claim of defective service, except for claims of late service. This ensures that procedural disputes over technical service defects do not interfere with the hearing process when the intended recipient has received the document.

This subsection is necessary to promote efficiency and fairness in the hearing process by focusing on the substance of service rather than technical defects. It aligns with established legal principles, such as the doctrine of substantial compliance, as minor errors in service would not invalidate service if the intended recipient receives actual notice. By exempting claims of late service, the provision ensures that deadlines are still enforced to maintain procedural integrity.



## **SECTION 17063.13 Discovery**

### **Subsection (a)**

The purpose of this subsection is to allow a party to request a copy of the opposing party's exhibits and a list of witnesses in advance of the hearing, provided the request is made in writing at least 30 days before the hearing. This provision facilitates access to proposed exhibits for the requesting party without mandating universal, early exhibit exchanges or imposing a time-consuming and costly discovery process.

This subsection is necessary to balance the need for transparency and fairness with the goal of maintaining the efficiency and informality of the hearing process. Allowing parties to request advance exhibits ensures they have adequate time to prepare for the hearing without requiring comprehensive pre-hearing discovery. The 30-day advance notice period provides sufficient time for the opposing party to comply with the request while avoiding unnecessary continuances or procedural disputes. It further allows time to file motions related to compelling disclosure should a party refuse to comply.

### **Subsection (a)(1)**

The purpose of this subsection is to allow a party to request the names of witnesses the opposing party intends to present at the hearing, along with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called. This ensures that parties can request advance notice of witness testimony, promoting fairness and preparation.

This subsection is necessary to provide transparency in the hearing process and to ensure that parties have sufficient information to prepare for cross-examination or rebuttal. Disclosure of witness names and a brief summary of expected testimony prevents surprises during the hearing, contributing to a fair and orderly proceeding. Allowing parties to request this information while preserving the informal nature of the process avoids the burdens of formal discovery.

### **Subsection (a)(2)**

The purpose of this subsection is to allow a party to request a copy of proposed exhibits and an opportunity to inspect all tangible evidence the opposing party proposes to offer as exhibits at the hearing. This provision ensures that parties have access to relevant materials in advance of the hearing, enabling effective preparation.

This subsection is necessary to promote fairness and transparency in the hearing process by providing parties with access to the evidence the opposing party intends to present. Allowing such requests prevents surprises and ensures that all parties can prepare adequately for the hearing without the need for formal discovery procedures, which could undermine the efficiency and informality of the process. Providing advance access to proposed exhibits also minimizes the risk of disputes over admissibility or relevance during the hearing itself, contributing to a smoother proceeding.

**Subsection (b)**

The purpose of this subsection is to set a deadline for compliance with a request to share a witness list and proposed exhibits. This ensures timely responses, allowing both parties sufficient time to prepare for the hearing.

This subsection is necessary to establish a clear timeline for responding to pre-hearing requests for witness information and exhibits, promoting efficiency and fairness in the hearing process. The 14-day deadline strikes a balance between providing the requesting party with adequate preparation time and minimizing the burden on the responding party. By setting this standard, the provision reduces the likelihood of delays or disputes about compliance with pre-hearing requests.

**Subsection (c)**

The purpose of this subsection is to require a party to supplement their responses to requests made under subsection (a) with any additional information subsequently acquired. This ensures that both parties have access to updated and complete information relevant to the proceeding.

This subsection is necessary to maintain fairness and transparency in the hearing process by preventing one party from being disadvantaged due to late-discovered evidence or witness information. The duty to supplement ensures that the information exchanged before the hearing remains accurate and current, reducing the likelihood of surprises or disputes during the proceeding. By limiting the duty to information that will be relied upon in the hearing, the provision balances transparency with efficiency, avoiding unnecessary disclosures of irrelevant or unused material.

**Subsection (d)**

The purpose of this subsection is to allow a party to request an order authorizing discovery like that used in formal administrative hearings (Gov. Code, § 11507.6) if exceptional circumstances exist. This ensures that discovery beyond the limited provisions of subsection (a) can be obtained when justified by unique or compelling circumstances.

This subsection is necessary to provide a mechanism for parties to obtain additional discovery when exceptional circumstances require it, ensuring fairness and access to necessary information. Government Code section 11507.6 outlines specific types of discovery that can be permitted in formal administrative hearings. By linking discovery to the existence of exceptional circumstances, this rule balances the need for additional evidence with the goal of maintaining the efficiency and informality of the hearing process for the vast majority of informal hearings.

**Subsection (e)**

The purpose of this subsection is to allow a party to request an order compelling discovery authorized under subsections (a) or (d) when the opposing party fails to

comply with a discovery request. This provision ensures that discovery requests are enforced only when they are reasonable and do not impose undue burdens or conflict with the fair and efficient adjudication of the hearing.

This subsection is necessary to provide a clear process for enforcing compliance with discovery requests authorized under the hearing rules. By limiting motions to compel discovery authorized under subsections (a) or (d), this provision prevents overreach and ensures that the presiding officer considers the appropriateness of the request. The requirement for the moving party to establish that the request is not overly burdensome, invasive, or contrary to the interests of efficient adjudication strikes a balance between transparency and efficiency. Without this provision, parties might lack recourse to address noncompliance, potentially jeopardizing access to critical information or evidence necessary for a fair hearing.

#### **Subsection (e)(1)**

The purpose of this subsection is to require the parties to meet and confer in an attempt to resolve a discovery dispute before filing a motion to compel. This provision promotes collaboration and reduces the need for intervention by the presiding officer.

This subsection is necessary to encourage efficient and cooperative resolution of discovery disputes, minimizing delays and conserving resources for both the parties and the presiding officer. Requiring a meet-and-confer process allows the parties to clarify misunderstandings, narrow the scope of disputes, and potentially reach an agreement without the need for a formal motion. This aligns with established legal practices in both civil and administrative proceedings, where informal resolution mechanisms are favored to streamline the adjudication process.

#### **Subsection (e)(2)**

The purpose of this subsection is to establish a clear timeline for filing a motion to compel discovery. It requires the motion to be filed within seven days of the other party's demonstrated failure or refusal to comply, or 15 days after the request was made with no reply, whichever is longer. This ensures timely resolution of discovery disputes while providing sufficient time for parties to act.

This subsection is necessary to provide a fair and predictable framework for addressing discovery disputes. The timelines strike a balance between promoting prompt resolution of disputes and allowing adequate time for parties to assess the situation and prepare their motion. By specifying that the longer of the two periods applies, the rule accommodates variations in discovery requests and responses, ensuring fairness for both parties.

#### **Subsection (e)(3)**

The purpose of this subsection is to outline the scope of materials the presiding officer may consider in ruling on a motion to compel. This ensures a fair and thorough evaluation of the motion while maintaining efficiency in the adjudication process.

This subsection is necessary to establish a clear and consistent process for resolving motions to compel discovery. By requiring the presiding officer to consider the filed documents, along with any oral argument or additional evidence deemed necessary, the provision ensures that the motion is resolved based on a complete record. Empowering the presiding officer to request supplemental input as needed promotes flexibility and ensures the motion is decided with all relevant information.

#### **Subsection (e)(4)**

The purpose of this subsection is to require that the presiding officer's order on a motion to compel be in writing and specify the date on which it becomes effective. This ensures clarity, transparency, and enforceability of the decision.

This subsection is necessary to provide a clear record of the presiding officer's decision on a motion to compel discovery. A written order ensures that all parties understand the ruling, including any requirements or deadlines imposed. Specifying the effective date of the order avoids confusion and establishes a concrete timeline for compliance, reducing the potential for further disputes.

#### **Subsection (e)(5)**

The purpose of this subsection is to provide sanctions for noncompliance with an order compelling discovery. If a party fails, without good cause, to comply with the order, the presiding officer may exclude the unproduced evidence from the record. Additionally, if willful suppression of evidence is shown, the unproduced evidence is presumed to contain adverse findings, conclusions, or opinions.

This subsection is necessary to enforce compliance with discovery orders and deter parties from disregarding their obligations during the administrative process. By allowing the presiding officer to exclude unproduced evidence, the provision ensures that one party does not gain an unfair advantage through noncompliance. The presumption of adverse findings in cases of willful suppression further incentivizes transparency and discourages bad-faith conduct. These sanctions align with Evidence Code section 413, which allows a trier of fact to draw inferences from suppression of evidence or failure to explain or deny evidence against that party. Without this rule, parties could ignore discovery obligations with impunity, undermining the reliability and effectiveness of the hearing process.

#### **Subsection (f)**

The purpose of this subsection is to clarify that the discovery provisions in this section do not apply to evidence used solely for the purpose of impeaching a witness. This

ensures that parties retain the ability to challenge the credibility of witnesses without being constrained by pre-hearing discovery requirements.

This subsection is necessary to preserve the fairness and flexibility of the hearing process by allowing parties to present impeachment evidence without the need to disclose it in advance through discovery. Impeachment evidence serves a specific and limited purpose: to test the credibility of a witness's testimony. Requiring its disclosure prior to the hearing could undermine its effectiveness.

## **SECTION 17063.14 Use of Subpoenas**

### **Subsection (a)**

The purpose of this subsection is to require parties to arrange for the presence of their witnesses at the hearing and to encourage voluntary participation over the use of subpoenas. This provision promotes efficiency and cooperation in securing witness testimony.

This subsection is necessary to ensure that parties take responsibility for securing the attendance of their witnesses while discouraging the unnecessary use of subpoenas, which can impose administrative burdens and create adversarial dynamics. By prioritizing good-faith efforts to obtain voluntary participation, this provision supports the informal and cooperative nature of the hearing process. Subpoenas remain available as a last resort to compel witness attendance, ensuring that parties retain a tool for obtaining essential testimony when voluntary participation is not feasible.

### **Subsection (b)**

The purpose of this subsection is to permit the issuance of subpoenas in accordance with Government Code sections 11450.05 to 11450.50. It also clarifies that subpoenas duces tecum may not be used to exceed or circumvent the scope of discovery authorized by section 17063.13.

This subsection is necessary to provide parties with a formal mechanism to compel the attendance of witnesses and the production of documents when voluntary cooperation cannot be obtained. By referencing Government Code sections 11450.05 to 11450.50, the rule ensures consistency with established procedures under the APA for issuing subpoenas and subpoenas duces tecum. The limitation on using subpoenas duces tecum to circumvent section 17063.13's discovery scope protects the efficiency of the hearing process, ensuring that discovery remains efficient. Without this provision, parties might misuse subpoenas to engage in overly broad or burdensome discovery, undermining the purpose of section 17063.13.

### **Subsection (c)**

The purpose of this subsection is to require a party requesting the issuance of a subpoena or subpoena duces tecum by a CHO hearing officer to demonstrate the need for the subpoena and submit the request at least 40 days before the hearing. It also places the responsibility for serving and enforcing the subpoena on the requesting party.

This subsection is necessary to ensure that subpoenas are issued only when there is a legitimate need, preventing the issuance of legally unsound or overly burdensome subpoenas used for the purpose of harassment. The 40-day timeline allows sufficient time for the presiding officer to evaluate the request and for the requesting party to serve and enforce the subpoena if granted, ensuring the orderly progression of the hearing process. Assigning the responsibility for serving and enforcing subpoenas to the

requesting party ensures fairness while minimizing the administrative burden on the CHO.

#### **Subsection (d)**

The purpose of this subsection is to require that all subpoenas be served in accordance with Government Code section 11450.20. Subpoenas must be served at least 30 days before the hearing date specified in the Notice of Hearing or at least 10 days before the hearing date specified in the Notice of Continued Hearing. This ensures timely notice for recipients.

This subsection is necessary to establish clear and consistent timelines for serving subpoenas in initial and continued hearings. The 30-day service requirement for initial hearings ensures recipients have adequate time to prepare for, comply with, or object to the subpoena. The 10-day service requirement for continued hearings aligns with the earlier rule requiring at least 10 days' notice of a continued hearing, maintaining procedural consistency while accommodating the shorter timeline for continued proceedings. By referencing Government Code section 11450.20, the subsection ensures compliance with established standards for subpoena service in administrative hearings.

#### **Subsection (e)**

The purpose of this subsection is to establish a timely process for filing motions under Government Code section 11450.30, allowing parties to object to or move to quash subpoenas while ensuring procedural efficiency. By requiring such motions to be filed promptly after service of the subpoena and within a reasonable timeframe before the appearance or production date, this provision ensures that objections are raised and resolved without disrupting the hearing process.

This subsection is necessary to strike a balance between ensuring parties have sufficient time to challenge improper subpoenas and avoiding unnecessary delays. By tying the deadline to the date of service or the specified appearance date, the rule accommodates shorter timelines for continued hearings while encouraging parties to act promptly. Requiring compliance with section 17063.16 ensures that motions are properly structured, supported, and served on all parties, promoting fairness and procedural consistency. Without this provision, parties might delay objections, leading to last-minute disputes that could disrupt the hearing or prevent compliance with valid subpoenas.

#### **Subsection (f)**

The purpose of this subsection is to authorize the presiding officer, upon a timely motion by a party or witness, or on their own motion, to quash, modify, or enforce compliance with a subpoena. This provision ensures that the presiding officer has the discretion to address and resolve disputes regarding subpoenas in a fair and efficient manner.

This subsection is necessary to provide a mechanism for addressing disputes over subpoenas in administrative proceedings, ensuring that subpoenas are neither overly burdensome nor improperly issued. Granting the presiding officer the authority to quash, modify, or enforce subpoenas provides flexibility to tailor decisions to the specific circumstances of each case. By requiring motions to quash or modify to be timely, the rule prevents unnecessary delays and ensures that any challenges are raised and resolved promptly.

#### **Subsection (g)**

The purpose of this subsection is to ensure that witnesses and custodians of records subpoenaed for a hearing are compensated for fees and mileage as required by Government Code section 11450.40. It also clarifies that the financial responsibility for all subpoena-related costs rests with the party requesting the subpoena, regardless of whether the party is represented by counsel or self-represented. This ensures fairness to subpoenaed individuals and provides clear guidance on cost allocation.

This subsection is necessary to establish clear financial accountability for subpoena costs in administrative hearings. Most subpoenas are expected to be issued at the request of attorneys representing parties, but this provision also accounts for the few subpoenas issued by the CHO on behalf of self-represented parties. By explicitly requiring all parties, whether represented or not, to bear the costs of the subpoenas they request, the rule ensures consistency and compliance with Government Code section 11450.40. This avoids potential cost-shifting to the CHO or unfair financial burdens on subpoenaed individuals.



## **SECTION 17063.15 Prehearing and Status Conferences**

### **Subsection (a)**

The purpose of this subsection is to allow the presiding officer to order a prehearing or status conference. This ensures flexibility in case management and facilitates the resolution of procedural or substantive issues before the hearing.

This subsection is necessary to provide the presiding officer with a tool to efficiently manage cases and address issues that may arise before a hearing or decision. Prehearing or status conferences enable the parties and the presiding officer to clarify procedural matters, narrow the issues, discuss potential settlements, or resolve discovery disputes, ultimately contributing to a more streamlined and efficient hearing process.

### **Subsection (a)(1)**

The purpose of this subsection is to allow a party to request a prehearing or status conference by filing a request with the CHO. This ensures that parties have the opportunity to raise procedural or substantive issues that may need to be addressed before the hearing or decision.

This subsection is necessary to provide parties with a formal mechanism to request a prehearing or status conference, promoting fairness and active participation in the hearing process. Allowing parties to request a conference ensures that they have an avenue to address procedural questions, narrow issues, or discuss potential resolutions in a timely manner. By formalizing this process through a filed request, the provision maintains consistency and creates a comprehensive record.

### **Subsection (a)(2)**

The purpose of this subsection is to detail the information required in an order setting a prehearing or status conference. This ensures clarity and notice for all parties involved.

This subsection is necessary to provide structure and transparency in the scheduling and conduct of prehearing or status conferences. By requiring the presiding officer to issue an order with the relevant details, the provision ensures that all parties are properly informed and prepared to participate in the conference. The inclusion of specific conditions allows the presiding officer to tailor the conference to the unique needs of the case, promoting efficiency and effective case management.

### **Subsection (a)(3)**

The purpose of this subsection is to establish that prehearing or status conferences will not be on the record unless otherwise directed by the presiding officer. This ensures flexibility in managing conferences and facilitates open and informal discussions to resolve procedural or substantive issues.

This subsection is necessary to promote candid and efficient discussions during prehearing or status conferences by clarifying that they are generally not recorded. The informal nature of these conferences encourages parties to address issues openly without concern that their statements will be part of the official record, thereby fostering cooperation and resolution of disputes. Providing the presiding officer with discretion to direct a conference to be on the record ensures flexibility to address circumstances where a formal record may be necessary, such as when oral agreements or critical procedural matters are being documented.

### **Subsection (b)**

The purpose of this subsection is to inform parties that a prehearing conference statement may be required in advance of the conference. The statement must address critical procedural and logistical matters, including the projected length of the hearing, issues presented, proposed exhibits and witnesses, stipulations, motions, accommodation needs, settlement assistance, and any other relevant matters. This ensures thorough preparation for an orderly and efficient hearing.

This subsection is necessary to facilitate effective prehearing conferences allowing the presiding officer to require parties to submit detailed written statements addressing key aspects of the case. These statements help the presiding officer identify and address procedural and substantive issues in advance, reducing the risk of delays or disputes during the hearing. Requiring parties to outline expectations promotes better case management and ensures fairness to all participants. Including the option to request settlement assistance aligns with the informal nature of the process and encourages the resolution of disputes without the need for a full hearing.

### **Subsection (c)**

The purpose of this subsection is to require the presiding officer to issue a written prehearing conference order after the conclusion of the conference, summarizing and incorporating the matters determined at the conference. This ensures that all parties have a clear record of decisions and agreements made during the conference.

This subsection is necessary to provide clarity and accountability in the prehearing process. A written order memorializes the determinations made during the conference, such as procedural agreements, scheduling decisions, and rulings on motions or other prehearing issues. This documentation ensures that all parties are aligned on the matters discussed and minimizes the risk of disputes or misunderstandings later in the hearing process. The prehearing conference order also aids in maintaining an efficient and orderly hearing by establishing clear expectations for all participants. Not requiring a similar statement for status conferences allows additional flexibility to focus on the issue requiring the conference.

## **SECTION 17063.16 Motions**

### **Subsection (a)**

The purpose of this subsection is to allow a party to file a motion with the CHO at any time before the decision is issued. This provision establishes a clear procedural mechanism for parties to request specific rulings or actions during the course of the hearing process. It also introduces a limitation on motions specific to cases governed by this article.

This subsection is necessary to provide parties with a structured process for raising procedural or substantive issues that require resolution before the decision is issued. Allowing motions to be filed ensures that parties can seek appropriate relief, clarify procedural uncertainties, or address disputes that may arise during the hearing process.

### **Subsection (a)(1)**

The purpose of this provision is to prohibit motions to dismiss from being addressed until after the case is submitted for decision. This ensures that dismissal motions are considered only after all parties have presented their evidence and the record is complete.

This provision is necessary to maintain procedural fairness and comply with established legal precedent. *Frost v. State Personnel Board* (1961) 190 Cal.App.2d 1, 5 holds that a presiding officer who lacks authority to issue a final decision cannot grant a motion to dismiss before evidence is heard. In administrative proceedings where the presiding officer drafts a proposed decision but does not issue the final decision, it is critical to develop a full evidentiary record before determining whether dismissal is appropriate. This rule prevents premature dismissal that could violate due process, ensures that the final decision-maker has a complete record for evaluation, and avoids wasting time on motions that cannot be resolved before the hearing is complete.

### **Subsection (b)**

The purpose of this subsection is to require that all motions, unless made during a prehearing conference or on the record at the hearing, be submitted in writing. This ensures clarity and proper documentation and prevents the occurrence of ex parte communications by requiring motions to be shared with all parties.

This subsection is necessary to maintain transparency and fairness in administrative proceedings. By requiring motions to be in writing, except when made orally during a prehearing conference or on the record at the hearing, this provision ensures that all parties and the presiding officer are aware of the motion and its basis. This rule minimizes the risk of ex parte communications by requiring written motions to be served on all parties, thereby promoting procedural integrity and compliance with applicable laws. Additionally, it creates a documented record for reference, allowing the presiding officer to make informed and accountable decisions.

### **Subsection (c)**

The purpose of this subsection is to set clear formatting and content requirements for motions and briefs filed in administrative proceedings. It limits the length of motions and briefs to 20 double-spaced typed pages (excluding exhibits) without prior permission, establishes minimum font size and margin standards, and requires specific information and details to be included in the motion. These requirements ensure that motions are concise, well-organized, and provide the necessary information for the presiding officer to evaluate the request.

This subsection is necessary to promote clarity, efficiency, and accessibility in the administrative hearing process. Limiting the length of motions and briefs prevents unnecessary verbosity, ensuring that filings remain focused and manageable for the presiding officer and other parties. Requiring specific formatting standards, such as font size, margins, and page limits, ensures readability and uniformity across submissions, which is particularly important in proceedings involving multiple parties or voluminous filings. The requirement to include essential information, such as the case name, file number, and legal and factual reasons for the motion, ensures that all filings are clear, properly identified, and actionable. The format limitations were presented at a workshop held on December 11, 2024, and CalRecycle received no comments on the formatting and content requirements.

### **Subsection (d)**

The purpose of this subsection is to allow a party to support or oppose a motion with affidavits, declarations, or other documents when the motion is based on information not already in the record. This ensures that the presiding officer has access to all relevant facts and evidence necessary to decide the motion.

This subsection is necessary to provide a clear mechanism for parties to present evidence or information outside the existing record when it is essential to resolving a motion. Administrative hearings often rely on a well-defined record, but certain motions may require the presiding officer to consider additional facts or evidence not yet introduced. Allowing parties to submit affidavits, declarations, or other supporting documents ensures that motions are fully substantiated and that the presiding officer has a complete basis for their ruling. This provision also promotes procedural fairness by permitting opposing parties to respond with their own supporting documentation.

### **Subsection (e)**

The purpose of this subsection is to clarify that, unless otherwise ordered by the presiding officer, a separate memorandum of points and authorities is not required to accompany a motion. This simplifies the motion filing process and reduces unnecessary procedural burdens for the parties.

This subsection is necessary to streamline administrative proceedings by eliminating the need for a separate memorandum of points and authorities, except when specifically

required by the presiding officer. Administrative hearings are intended to be less formal and more efficient than judicial proceedings. Allowing parties to include legal and factual arguments within the motion itself simplifies the process and reduces procedural complexity, particularly for self-represented parties. At the same time, the presiding officer retains discretion to require a separate memorandum in more complex cases, ensuring flexibility.

### **Subsection (f)**

The purpose of this subsection is to require a party to make a good-faith effort to determine whether other parties agree to or oppose a motion before filing it. The motion must describe these efforts and specify whether other parties agree or oppose. This provision encourages collaboration and reduces unnecessary disputes.

This subsection is necessary to promote efficiency and reduce the number of contested motions by encouraging parties to resolve procedural issues informally whenever possible. Requiring parties to engage in good-faith communication before filing a motion minimizes unnecessary filings and ensures that the presiding officer's time is focused on resolving genuine disputes. By requiring the motion to describe the party's efforts and the other parties' positions, this rule fosters transparency and accountability. Without this provision, parties may file unnecessary or easily resolvable motions, leading to delays and increased administrative burdens on the hearing process.

### **Subsection (f)(1)**

The purpose of this subsection is to define a "good-faith effort" as a reasonable attempt, considering the circumstances, to contact a party or their representative by in-person communication, telephone, email, or other means. This ensures clarity about the standard of effort required to meet the good-faith requirement.

This subsection is necessary to provide clear guidance on what constitutes a good-faith effort when attempting to communicate with other parties before filing a motion. Defining "good-faith effort" ensures that parties understand the level of diligence required to comply with the rule, preventing disputes over whether the standard has been met. By including flexibility in the means of contact (e.g., in-person, telephone, email, or other methods), the rule accommodates the diverse circumstances and communication preferences that may arise in administrative proceedings.

### **Subsection (f)(1)(A)**

The purpose of this subsection is to clarify that contact by mail constitutes a good-faith effort only when the party's telephone number and email address are not reasonably available. This ensures that more immediate and efficient methods of communication are prioritized whenever possible.

This subsection is necessary to emphasize the importance of using timely and effective communication methods, such as phone or email, in administrative proceedings. While

contact by mail is an option, it is inherently slower and may delay the resolution of issues. By limiting the use of mail as a good-faith effort to situations where no other contact information is reasonably available, this provision ensures that parties engage in meaningful and efficient communication before filing motions. This rule minimizes delays, encourages cooperation, and supports the timely resolution of procedural matters.

### **Subsection (f)(1)(B)**

The purpose of this subsection is to clarify that simply serving a party with the motion does not constitute a good-faith effort to contact the party before filing the motion. This ensures that parties engage in meaningful communication to resolve disputes or secure agreement before seeking intervention from the presiding officer.

This subsection is necessary to prevent parties from circumventing the intent of the good-faith requirement by merely serving a motion without attempting to resolve the issue informally. The requirement to engage in genuine efforts to contact the opposing party aligns with principles of procedural fairness and judicial efficiency, as outlined in *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431. In *Obregon*, the court emphasized the importance of meaningful attempts to meet and confer before seeking judicial relief, recognizing that such efforts reduce unnecessary filings and disputes. By specifying that service alone does not satisfy the good-faith standard, this provision ensures compliance with the broader policy goal of encouraging cooperation and minimizing unnecessary litigation.

### **Subsection (g)**

The purpose of this subsection is to establish that parties opposing a motion have 10 days from the service of the motion to file and serve a response unless otherwise provided by the CalRecycle Informal Hearing Rules or ordered by the presiding officer. It further prohibits additional filings related to the motion unless authorized by the presiding officer. This ensures a structured and efficient process for resolving motions.

This subsection is necessary to provide clear and consistent deadlines for filing responses to motions, ensuring procedural fairness and efficiency in the hearing process. The 10-day timeline balances the need for parties to prepare a response with the goal of avoiding unnecessary delays. By requiring responses to be filed and served within this timeframe, the provision promotes timely resolution of motions and keeps the hearing process on schedule. Additionally, restricting further filings without the presiding officer's authorization prevents unnecessary or repetitive submissions that could delay proceedings. This provision aligns with principles of judicial and administrative efficiency, ensuring that the presiding officer can effectively manage motion practice while maintaining fairness to all parties.

## **SECTION 17063.17 Continuances**

### **Subsection (a)**

The purpose of this subsection is to establish a clear process for requesting a continuance of a hearing or conference. A party must submit a continuance motion to the CHO at least five business days before the scheduled hearing or conference, absent exceptional circumstances. The subsection also requires the requesting party to demonstrate good cause for the continuance and provide alternative dates agreeable to all parties.

This subsection is necessary to ensure that requests for continuances are handled efficiently and fairly, minimizing disruption to the hearing schedule while preserving due process for all parties. Requiring a continuance motion to be filed at least five business days in advance provides the CHO and other parties with sufficient notice and time to adjust schedules and reschedule court reporters and interpreters. The good cause requirement prevents unnecessary delays by limiting continuances to valid and substantiated reasons, while the requirement to propose alternative dates ensures collaboration and reduces the likelihood of scheduling disputes.

### **Subsection (a)(1)**

The purpose of this subsection is to establish criteria for evaluating good cause in continuance requests. The presiding officer shall consider factors such as relevant issues and events beyond the party's control, the length of any delay in seeking the continuance, the diligence of the requesting party, and any potential prejudice to the opposing party. This ensures that good cause determinations are fair, consistent, and based on relevant circumstances.

This subsection is necessary to provide clarity and guidance on how the presiding officer evaluates good cause in continuance requests. By outlining specific factors, the rule ensures that requests are assessed in a manner that balances the interests of the requesting party, the opposing party, and the efficiency of the hearing process. Requiring consideration of events beyond the party's control and the diligence of the requesting party ensures that continuances are granted only when genuinely warranted and not due to avoidable delays or lack of preparation. Additionally, consideration of potential prejudice to the opposing party safeguards procedural fairness and prevents undue harm.

### **Subsection (b)**

The purpose of this subsection is to require the CHO to send a Notice of Continued Hearing to all parties when a continuance is approved. This notice must include the new date and time for the hearing and comply with the same requirements as a Notice of Hearing, as outlined in section 17063.4. This ensures that all parties are properly informed of the updated hearing schedule.

This subsection is necessary to maintain transparency and procedural fairness following the granting of a continuance. By requiring the issuance of a Notice of Continued Hearing, the rule ensures that all parties have formal and documented notice of the revised hearing schedule, preventing confusion or disputes about the new date and time. Aligning the content of the Notice of Continued Hearing with the requirements of a Notice of Hearing under section 17063.4 ensures consistency and clarity, as the notice will include all essential information required for participation.



## **SECTION 17063.18 Public Observation of Informal Hearings**

### **Subsection (a)**

The purpose of this subsection is to require that CalRecycle's informal hearings generally be open to public observation, consistent with Government Code section 11425.20. The subsection also identifies that certain grounds may justify closing a hearing to the public, balancing the need for transparency with the protection of sensitive or confidential information.

This subsection is necessary to comply with Government Code section 11425.20, which provides that administrative hearings must be open to public observation except in specific circumstances. Open hearings promote transparency, accountability, and public confidence in the hearing process. However, there are situations where protecting sensitive information or privacy rights outweighs the public's interest in observing the hearing. By recognizing these exceptions, the rule ensures flexibility while preserving the fairness and efficiency of the process.

#### **Subsection (a)(1)**

The purpose of this subsection is to allow the exclusion of individuals whose behavior disrupts the orderly conduct of the hearing. This ensures that hearings can proceed efficiently and without unnecessary interruptions.

This subsection is necessary to maintain decorum and ensure the orderly conduct of administrative hearings. While Government Code section 11425.20 promotes public observation of hearings, it also allows for exceptions when necessary to protect the integrity of the process. Disruptive behavior can hinder the presiding officer's ability to manage the hearing and interfere with the parties' ability to present their cases effectively. This provision grants the presiding officer the authority to exclude individuals whose conduct disrupts the hearing, thereby safeguarding the fairness and efficiency of the proceedings.

#### **Subsection (a)(2)**

The purpose of this subsection is to allow the limitation of public attendance at hearings when space constraints in the hearing facility make it impractical to accommodate all observers. This ensures that hearings can proceed safely and efficiently despite physical limitations.

This subsection is necessary to address practical challenges related to physical space limitations in hearing facilities. The APA Bill of Rights includes the right to public observation (Gov. Code, § 11425.10), which is further detailed in Government Code section 11425.20. This section promotes public observation of administrative hearings while recognizing that the size of the venue may limit the number of attendees. Allowing the presiding officer to limit attendance under these circumstances ensures that the

hearing can proceed in an orderly and safe manner, while still maintaining transparency to the extent possible.

### **Subsection (a)(3)**

The purpose of this subsection is to authorize the presiding officer to take additional actions necessary to ensure due process and maintain order during the hearing, including closing the hearing to public observation when required. This provision ensures the integrity and fairness of the hearing process in exceptional circumstances.

This subsection is necessary to provide flexibility for the presiding officer to address unique and unforeseen situations that may arise during the hearing, which could compromise due process or the orderly conduct of the proceedings. While subsection (a) establishes the default principle that hearings shall be open to public observation, this subsection acknowledges that there are unforeseeable circumstances where maintaining fairness and order may require temporarily or partially restricting public access. By allowing the presiding officer to take necessary actions, this rule ensures the hearing process is conducted in a manner that protects the rights of all participants and preserves the integrity of the administrative proceeding.

### **Subsection (b)**

The purpose of this subsection is to establish guidelines for public observation of informal hearings conducted electronically, consistent with the general rule that hearings are open to the public. It also addresses specific circumstances under which public access to electronic hearings may be restricted to ensure fairness, order, and the integrity of the proceedings.

This subsection is necessary to clarify how public access is maintained in the context of electronically conducted informal hearings, where traditional in-person observation is not feasible. By addressing issues unique to electronic hearings, such as technological access or security concerns, the provision ensures that the public can observe hearings in a manner consistent with Government Code section 11425.20. It also ensures transparency while providing flexibility to restrict access under limited, justified circumstances

### **Subsection (b)(1)**

The purpose of this subsection is to require non-parties wishing to observe a remote hearing to submit a written request to the CHO at least one business day before the hearing begins. This ensures that the CHO has sufficient time to process the request and provide the observer with the necessary information to access the hearing.

This subsection is necessary to facilitate public observation of remote hearings while ensuring the process is organized and manageable. Requiring a written request at least one business day before the hearing gives the hearing clerk adequate time to review the request and provide the necessary link or access information. Without this provision,

last-minute or uncoordinated requests could cause delays or disrupt the hearing process.

### **Subsection (b)(2)**

The purpose of this subsection is to grant the presiding officer the authority to allow late requests to observe a remote hearing when granting the request serves the public interest. This provision ensures flexibility in accommodating public access while maintaining the integrity and efficiency of the hearing process.

This subsection is necessary to provide the presiding officer with discretion to grant late requests for observing remote hearings in exceptional circumstances, particularly when doing so supports transparency and the public's right to access administrative proceedings. While subsection (b)(1) establishes a deadline for submitting requests, this provision ensures that unforeseen or compelling public interest concerns can still be addressed. Allowing late requests at the discretion of the presiding officer balances the need for efficient hearing management with the overarching goal of promoting public trust and accountability.

### **Subsection (c)**

The purpose of this subsection is to clarify that prehearing conferences, status conferences, and settlement conferences are not open to public observation. This aligns with Government Code section 11425.20, subsection (c), which specifically exempts these types of proceedings from public access requirements.

This subsection is necessary to codify the exemption provided under Government Code section 11425.20, subsection (c), which states that public access requirements do not apply to prehearing conferences, settlement conferences, or proceedings for alternative dispute resolution other than binding arbitration. Government Code section 11420.30 provides that communications made during alternative dispute resolution are confidential. These types of proceedings focus on procedural matters, case management, or settlement discussions, and allowing public access could discourage candid communication or compromise confidentiality. Excluding the public ensures that parties can openly address procedural issues or explore settlement options without fear of external influence or disclosure of sensitive information.

## **SECTION 17063.19 Hearing Procedures**

### **Subsection (a)**

The purpose of this subsection is to require that hearings be conducted electronically unless the presiding officer orders the parties to appear in person. It also mandates the CHO to provide instructions on how to participate in the videoconference, specify the required technological equipment, and offer guidance on addressing technical issues. This ensures accessibility and clarity for all participants.

This subsection is necessary to facilitate the efficient and cost-effective administration of informal hearings while ensuring that all participants have the tools and information needed to participate fully. Government Code section 11440.30 authorizes the presiding officer to conduct all or part of a hearing by electronic means so long as participants have an opportunity to participate and observe exhibits. Conducting hearings electronically promotes accessibility by reducing travel costs and time burdens for parties, representatives, and witnesses. It also supports CalRecycle's broader goals of sustainability by minimizing environmental impacts associated with in-person appearances. The provision requiring the CHO to provide instructions and guidance ensures that participants are prepared to use the videoconference platform effectively and that technical difficulties do not disrupt the hearing process.

### **Subsection (a)(1)**

The purpose of this subsection is to provide a clear process for parties to object to a hearing being conducted electronically. A party may file a written motion with the CHO or make an oral objection at a prehearing conference, provided the objection is submitted at least 14 days before the scheduled hearing. This ensures that objections are raised and addressed in a timely and orderly manner.

This subsection is necessary to protect the rights of parties who may have legitimate concerns about participating in an electronic hearing, such as technological limitations, accessibility issues, or the inability to adequately present evidence or cross-examine witnesses in a remote format. Establishing a 14-day deadline ensures that the presiding officer has sufficient time to evaluate the objection, make a determination, and, if needed, arrange for an in-person hearing without disrupting the hearing schedule. Allowing objections to be raised in writing or at a prehearing conference ensures flexibility and accommodates varying procedural circumstances.

### **Subsection (a)(2)**

The purpose of this subsection is to establish CalRecycle's Sacramento office as the location for any hearing conducted entirely in person. This ensures a consistent, safe, and adequate venue for in-person administrative hearings.

This subsection is necessary to ensure that in-person hearings are conducted in a location with appropriate facilities for administrative proceedings. CalRecycle's

Sacramento office is equipped with meeting rooms that are secure, accessible, and designed to support the needs of a state agency, including having wireless internet access to review electronic exhibits. Limiting in-person hearings to this location also reduces administrative costs, as required hearing staff are based in Sacramento, minimizing travel expenses and logistical challenges.

### **Subsection (a)(3)**

The purpose of this subsection is to require a hybrid hearing when neither an entirely electronic nor an entirely in-person hearing allows a party to fully participate and observe exhibits. In a hybrid hearing, parties and witnesses may participate both in person at CalRecycle's Sacramento office or field offices and electronically via videoconference. This ensures flexibility in accommodating the needs of all participants.

This subsection is necessary to provide an equitable and accessible hearing process for parties and witnesses who may face barriers to participating in a fully electronic or fully in-person hearing. A hybrid format allows individuals to engage in the hearing process in a manner that best suits their circumstances, ensuring that no party is disadvantaged due to technical limitations, geographic constraints, or other challenges. By allowing participation from both the Sacramento office, field offices, and over videoconference, the hybrid hearing format promotes efficiency, reduces travel burdens, and ensures that all parties can fully observe exhibits and provide testimony.

### **Subsection (b)**

The purpose of this subsection is to enumerate the rights of a party at a hearing. This ensures that all participants understand their procedural rights and guarantees fairness and transparency throughout the administrative hearing process.

This subsection is necessary to provide clarity and consistency regarding the procedural rights afforded to parties in an administrative hearing. By explicitly listing these rights, the provision ensures that parties are fully informed of their ability to participate in and respond to the hearing process, in compliance with principles of due process. These rights protect the integrity of the proceedings and promote confidence in the fairness of the adjudicative process.

### **Subsection (b)(1)**

The purpose of this subsection is to affirm a party's right to testify and to present other witnesses to testify on their behalf during an administrative hearing. This ensures that parties can fully present their case and provide evidence supporting their position.

This subsection is necessary to uphold the fundamental principles of due process in administrative hearings, ensuring that all parties have the opportunity to be heard and to present testimony from witnesses relevant to their case. Allowing parties to testify and call witnesses ensures that the hearing record is complete and that the presiding officer has access to all relevant evidence before making a decision. This provision aligns with

Government Code section 11425.10, subsection (a)(1), which includes the right to present and rebut evidence, and a similar provision for formal administrative hearings in Government Code section 11513.

### **Subsection (b)(2)**

The purpose of this subsection is to affirm a party's right to cross-examine witnesses called by another party during an administrative hearing. Cross-examination ensures that all parties have an opportunity to challenge and test the credibility, reliability, and relevance of the evidence presented by opposing witnesses.

This subsection is necessary to uphold due process and ensure fairness in administrative hearings. Cross-examination is a fundamental tool for assessing the credibility of witnesses and the weight of their testimony. By codifying the right to cross-examine opposing witnesses, this provision promotes the development of a complete and reliable evidentiary record for the presiding officer's decision. This provision aligns with Government Code section 11425.10, subsection (a)(1), which includes the right to present and rebut evidence, and a similar provision for formal administrative hearings in Government Code section 11513.

### **Subsection (b)(3)**

The purpose of this subsection is to allow a party to request the exclusion of any prospective witness, other than a party or their representative, from the hearing until their testimony is given. This ensures that witness testimony remains independent and uninfluenced by the testimony of others.

This subsection is necessary to preserve the integrity and reliability of witness testimony in administrative hearings. By excluding prospective witnesses from observing the hearing prior to their testimony, the provision prevents witnesses from being influenced by the statements or evidence presented by others. This is particularly important in ensuring that each witness's testimony reflects their own recollection and perspective.

### **Subsection (b)(4)**

The purpose of this subsection is to guarantee that a party has the right to examine all exhibits offered into evidence by another party. This ensures transparency and allows each party to fully understand and respond to the evidence presented during the hearing.

This subsection is necessary to uphold due process and fairness in administrative hearings. Examining exhibits offered by another party enables the opposing party to verify their authenticity, assess their relevance, and formulate objections or responses. This right is fundamental to ensuring that the hearing process remains adversarial and equitable.

### **Subsection (b)(5)**

The purpose of this subsection is to grant parties the right to object to the admission of any testimony or other evidence during the hearing. This ensures that the presiding officer considers only evidence that is relevant, reliable, and admissible, while preserving the party's ability to raise objections in the record for potential appellate review.

This subsection is necessary to uphold procedural fairness and protect a party's ability to preserve issues for appeal. In administrative hearings, a party's failure to object to improper testimony or evidence may result in a waiver of the right to challenge that evidence on appeal, as a reviewing court will generally only consider arguments raised in the first instance. Codifying the right to object ensures that parties can address evidentiary concerns at the appropriate time and develop a complete record for appellate review if needed.

#### **Subsection (b)(6)**

The purpose of this subsection is to affirm a party's right to appear with a representative during the hearing, consistent with the provisions outlined in section 17063.5. This ensures that parties can rely on professional or other assistance to effectively present their case.

This subsection is necessary to protect a party's right to fair representation during administrative hearings. Many parties may feel they lack the legal expertise or procedural knowledge required to navigate the hearing process effectively on their own. By affirming their right to appear with a representative, this provision ensures that parties can receive the guidance and support they need to present their arguments and evidence competently. Referring to section 17063.5 provides clarity and consistency, as section 17063.5 outlines the specific qualifications, requirements, and limitations related to representation.

#### **Subsection (c)**

The purpose of this subsection is to clarify that if a respondent chooses not to testify voluntarily, they may still be called and questioned by CalRecycle during the hearing. This provision ensures that all relevant evidence can be fully examined and presented to the presiding officer, even if the respondent opts not to testify on their own behalf.

This subsection is necessary to uphold the principles of fairness and thoroughness in administrative hearings. Under Government Code section 11513, if a respondent does not testify on his or her own behalf he or she may be called and examined as if under cross-examination. This ensures that a respondent's decision not to testify voluntarily does not limit the agency's ability to gather relevant evidence or explore key facts through questioning.

#### **Subsection (d)**

The purpose of this subsection is to affirm the parties' rights to present various types of evidence, including documentary, demonstrative, testimonial, and physical evidence, during the hearing. Additionally, it vests the presiding officer with the authority to determine the admissibility of evidence, ensuring that only appropriate and relevant evidence becomes part of the record.

This subsection is necessary to establish clear guidelines for the submission and consideration of evidence during administrative hearings, consistent with due process principles. Allowing parties to submit multiple forms of evidence ensures they can fully present their case and provide the presiding officer with a complete understanding of the facts. Granting the presiding officer discretion to decide what evidence is admitted aligns with Government Code section 11513, which governs the admissibility of evidence in formal administrative hearings and emphasizes relevance and reliability as key criteria.

#### **Subsection (e)**

The purpose of this subsection is to establish that closing arguments at a hearing shall generally be delivered orally unless the presiding officer orders otherwise. This ensures consistency in the hearing process while allowing flexibility for written submissions when appropriate.

This subsection is necessary to promote efficiency and clarity in the hearing process by setting oral arguments as the default method for closing arguments. However, the provision also grants the presiding officer the discretion to require written closing arguments when the complexity of the case or other factors make written submissions more appropriate. This flexibility ensures that the hearing process remains adaptable to the needs of individual cases while maintaining procedural fairness and efficiency.

#### **Subsection (f)**

The purpose of this subsection is to confirm that all hearing officers employed by CalRecycle are authorized to administer oaths during administrative hearings. This ensures that testimony and other sworn statements provided during the hearing are given under penalty of perjury.

This subsection is necessary to ensure that testimony in administrative hearings is reliable and credible. The authority for hearing officers to administer oaths is consistent with Government Code section 11528, which grants presiding officers the authority to administer oaths in formal administrative proceedings. Codifying this authority in the regulation ensures clarity and prevents any doubt regarding the hearing officers' ability to administer oaths.



## **SECTION 17063.20 Written Cases**

### **Subsection (a)**

The purpose of this subsection is to provide that a case may be conducted solely through written submissions without a hearing, either when specified by statute or upon approval of a party's request by the presiding officer. This ensures flexibility in the adjudication process while maintaining fairness and efficiency.

This subsection is necessary to clarify when a case may be resolved without a hearing, thereby promoting efficiency in cases where written submissions are sufficient for the presiding officer to make a determination. Additionally, allowing the presiding officer to approve requests for written-only submissions accommodates parties who prefer to resolve matters without the time and expense associated with a hearing. This approach balances efficiency with fairness by ensuring that all parties consent to or are given proper notice of the decision-making process.

### **Subsection (b)**

The purpose of this subsection is to require the presiding officer to issue an order establishing a briefing schedule for cases conducted solely through written submissions. The subsection also provides a default framework for the briefing process while granting the presiding officer discretion to modify deadlines and procedures based on the specific needs of the case. This ensures fairness, efficiency, and clarity in the resolution of written cases.

This subsection is necessary to provide structure and consistency in the process of resolving cases through written submissions. By requiring a briefing schedule with deadlines for written statements, responses, and replies, this provision ensures that parties have clear expectations and an opportunity to present their arguments and evidence within a reasonable timeframe. Without this provision, there could be confusion or inconsistency in how written cases are managed, potentially leading to procedural disputes, inefficiencies, or unfair outcomes.

Granting the presiding officer discretion to modify the schedule promotes efficiency and procedural fairness, allowing for adjustments to address unforeseen challenges or delays. This rule enhances the transparency and reliability of the written adjudication process while maintaining the flexibility needed to handle diverse case scenarios.

### **Subsection (b)(1)**

The purpose of this subsection is to require the respondent to submit a written statement to the CHO and the opposing party no later than 30 days after filing the Notice of Defense. This written statement must outline the legal and factual grounds for challenging CalRecycle's action and may include supporting evidence such as documentary materials, declarations, and affidavits. This provision ensures the

respondent has an opportunity to clearly articulate their position and submit relevant evidence in a timely manner.

This subsection is necessary to establish an orderly process for ensuring that the respondent's arguments and evidence are submitted early in the adjudication process. By setting a 30-day deadline, the provision promotes efficiency and prevents undue delays in resolving the case. Allowing respondents to include supporting materials such as declarations and affidavits ensures that they can present a complete and compelling case, consistent with principles of due process. Requiring the statement to identify legal and factual grounds also ensures clarity and precision, enabling CalRecycle and the presiding officer to understand the issues in dispute. Thirty days as a deadline to file a written statement was presented at a workshop on December 11, 2024, and CalRecycle received no comments on the proposed deadline.

### **Subsection (b)(2)**

The purpose of this subsection is to allow CalRecycle to submit a response no later than 15 days after receiving the respondent's written statement. The response may include supporting documentary evidence, declarations, and affidavits. This ensures that CalRecycle has an opportunity to address the respondent's legal and factual arguments and present its own evidence in support of its action.

This subsection is necessary to establish a clear timeline for CalRecycle to respond to the respondent's written statement, promoting efficiency and fairness in the written adjudication process. The 15-day timeframe ensures that CalRecycle has sufficient time to review the respondent's arguments and prepare a substantive response, while also maintaining the overall timeliness of the proceeding. Allowing CalRecycle to include supporting evidence, such as declarations and affidavits, ensures that the presiding officer has access to all relevant materials needed to evaluate the case. Fifteen days as a deadline to file a response to a Respondent's written statement was presented at a workshop on December 11, 2024, and CalRecycle received no comments on the proposed deadline.

### **Subsection (b)(3)**

The purpose of this subsection is to allow the respondent to submit a written reply no later than seven days after receiving CalRecycle's response. The reply is limited to addressing the arguments and evidence raised in CalRecycle's response and is not intended to introduce new evidence or raise new legal or factual grounds. This ensures that the respondent has an opportunity to clarify or rebut points raised by CalRecycle without prolonging the process or introducing unnecessary complexity.

This subsection is necessary to provide the respondent with a fair opportunity to address arguments and evidence raised in CalRecycle's response while maintaining the efficiency of the written adjudication process. Limiting the reply to the issues and evidence introduced in CalRecycle's response ensures that the process remains

focused and prevents unnecessary delays caused by the introduction of new evidence or issues late in the case. The seven-day timeframe promotes timeliness and ensures the matter progresses without undue delay, while still allowing the respondent sufficient time to prepare a meaningful reply. Seven days as a deadline to file a reply to a Department response was presented at a workshop on December 11, 2024, and CalRecycle received no comments on the proposed deadline.

#### **Subsection (b)(4)**

The purpose of this subsection is to require that any supporting documentary evidence, declarations, or affidavits be marked and identified on an exhibit list attached to the filing. This ensures that all evidence is clearly identified and properly organized for consideration by the presiding officer and the opposing party.

This subsection is necessary to ensure that the presiding officer has received all exhibits that the party intends to submit as part of the written record. Unlike in a live hearing, where parties have the opportunity to clarify and address any missing documents in real-time, a written-only process lacks the ability for quick back-and-forth communication. Requiring exhibits to be marked and identified on an exhibit list reduces the risk of oversight or procedural confusion and helps ensure that the record is complete and transparent.

#### **Subsection (c)**

The purpose of this subsection is to grant the presiding officer the authority to modify the deadlines or procedures outlined in subsection (b) when necessary to address case-specific circumstances. This includes, but is not limited to, the complexity of the case, the availability of the parties, or the volume of evidence to be submitted. The subsection also requires that any modifications be clearly specified in the order establishing the briefing schedule, ensuring transparency and clarity.

This subsection is necessary to provide flexibility in the written adjudication process, allowing the presiding officer to tailor the briefing schedule to the unique needs and challenges of each case. Cases with complex legal or factual issues, limited party availability, or substantial evidence submissions may require adjustments to the standard timelines or procedures to ensure fairness and efficiency. Requiring the presiding officer to specify any modifications in the briefing schedule order ensures transparency and minimizes confusion or disputes over deadlines and procedures. Without this provision, the adjudication process could become overly rigid, leading to inefficiencies or unfair outcomes in cases that require procedural adjustments to accommodate specific circumstances. This flexibility supports a fair and adaptable process while maintaining accountability and clarity for all parties involved.

#### **Subsection (d)**

The purpose of this subsection is to ensure the presiding officer has the authority to request additional information, including testimony, after the submission of written

arguments. This means that the presiding officer has the ability to clarify issues, obtain missing information, or develop a more complete record to support the decision-making process.

This subsection is necessary to maintain the integrity and thoroughness of the adjudication process in cases conducted solely through written submissions. While written arguments often suffice to resolve most issues, there may be situations where additional information or testimony is needed to address gaps in the record, clarify ambiguities, or resolve contested issues. By granting the presiding officer the discretion to request such additional materials, the provision ensures that the record is complete and reliable before a decision is made.

### **Subsection (e)**

The purpose of this subsection is to affirm that a party may seek judicial review of the decision in a written case, in accordance with the procedures outlined in section 17063.29. This ensures that parties have access to a process for appellate review if they believe the decision in their case is legally erroneous.

This subsection is necessary to safeguard parties' rights to judicial review, a fundamental aspect of administrative law that ensures accountability and fairness in the decision-making process. By referencing section 17063.29, this provision provides clarity on the specific procedural steps parties must follow to seek judicial review, ensuring consistency.

## **SECTION 17063.21 Presentation of Evidence**

The purpose of this provision is to establish the specific evidence rules applicable to informal hearings conducted by the CHO. This ensures that parties understand the standards for the admissibility, presentation, and evaluation of evidence in these hearings, consistent with the informal nature of the process.

This provision is necessary to define and clarify the evidence rules governing informal hearings, providing structure and predictability for all parties. Administrative hearings rely on more relaxed evidentiary standards than civil proceedings, but they must still ensure procedural fairness and reliable outcomes. By codifying the evidence rules, this provision prevents disputes over admissibility and ensures that the presiding officer has clear guidelines for evaluating evidence.

### **Subsection (a)**

The purpose of this subsection is to require that all oral evidence presented in an informal hearing before the CHO be given under oath or affirmation. This ensures the credibility and reliability of testimony provided during the hearing and underscores the seriousness of the proceedings.

This subsection is necessary to maintain the integrity of the evidentiary process in informal hearings. Requiring oral testimony to be given under oath or affirmation helps ensure that witnesses understand their legal obligation to provide truthful and accurate statements, as false testimony may carry consequences for perjury. This rule aligns with fundamental principles of due process and evidentiary reliability in administrative proceedings.

### **Subsection (b)**

The purpose of this subsection is to clarify that informal hearings before the CHO are not bound by the technical rules of evidence. Instead, the subsection allows the presiding officer to consider any relevant evidence that a reasonable person would rely on in serious matters. This approach promotes flexibility while ensuring fairness and reliability in the evidence admitted during the hearing.

This subsection is necessary to align the evidentiary standards of informal hearings with those applied in other administrative forums, which emphasize relevance and reliability over strict adherence to formal evidentiary rules. For instance, Government Code section 11513, subsection (c), states that evidence commonly relied upon by reasonable individuals in serious affairs is admissible in formal administrative hearings. Similarly, other administrative forums adopt comparable standards, such as those set forth in the California Code of Regulations, title 8, section 376.2. By adopting this standard, the provision ensures that the presiding officer has access to a broad range of relevant evidence necessary to make informed decisions while minimizing procedural barriers for parties. This evidentiary flexibility is critical in maintaining the efficiency and fairness of informal hearings, ensuring that decisions are based on a thorough and

reliable record. This standard was presented by the department at a workshop on December 11, 2025, and the department did not receive any comments.

### **Subsection (c)**

The purpose of this subsection is to establish that hearsay evidence may be used in informal hearings before the CHO to supplement or explain other evidence. However, if the opposing party objects, hearsay evidence alone cannot support a factual finding unless it would be admissible over objection in a civil action. This ensures flexibility in evidence admission while safeguarding against decisions based solely on unreliable or inadmissible hearsay.

This subsection is necessary to clarify the role of hearsay evidence in informal administrative hearings and to align with standards set forth in Government Code section 11513, subsection (d), which permits the use of hearsay evidence to supplement or explain other evidence in formal administrative hearings. Similar evidentiary rules are used in other administrative hearings. (See Cal. Code Regs., tit. 8, § 376.2.) By adopting these principles, the subsection ensures that informal hearings remain efficient and accessible, allowing parties to rely on hearsay evidence when appropriate. At the same time, it maintains fairness and evidentiary reliability by preventing factual findings from resting solely on hearsay unless it meets the higher admissibility standards of a civil action.

### **Subsection (d)**

The purpose of this subsection is to establish that relevant evidence may be withheld if it is privileged under the law, protecting sensitive communications or information from disclosure. Additionally, the subsection provides that the presiding officer has the authority to review the disputed documents privately and require the withholding party to provide a privilege log describing the withheld documents. This ensures a fair and transparent process for evaluating claims of privilege.

This subsection is necessary to balance the protection of legally privileged information with the need for a complete and reliable evidentiary record in informal hearings. Privileges such as attorney-client communications or attorney work product are well-established under the law and must be respected to maintain fairness and protect sensitive information. At the same time, disputes about privilege claims can disrupt the hearing process and create uncertainty. Granting the presiding officer authority to conduct an in-camera review aligns with procedures recognized in Evidence Code section 915, which allows courts to privately review documents to determine whether a privilege claim is valid. Similarly, the requirement for a privilege log aligns with common administrative practices, such as those referenced in the California Code of Civil Procedure section 2031.240, ensuring transparency about withheld documents without breaching privileged material.

### **Subsection (e)**

The purpose of this subsection is to grant the presiding officer the discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will result in undue consumption of time. This ensures that hearings remain efficient and focused while maintaining fairness in the evaluation of evidence.

This subsection is necessary to establish a clear standard for the presiding officer to manage the presentation of evidence in informal hearings. It mirrors the balancing test found in Evidence Code section 352, which provides that evidence may be excluded if its probative value is substantially outweighed by concerns such as undue delay or waste of time. Similar principles are applied in formal administrative hearings under Government Code section 11513. By incorporating this standard, the subsection ensures that the presiding officer has the authority to prevent the hearing from becoming unnecessarily lengthy or burdensome due to the presentation of marginally relevant evidence. Without this rule, hearings could be delayed by the introduction of evidence with minimal relevance, undermining the goal of efficiency in informal administrative adjudication.

#### **Subsection (f)**

The purpose of this subsection is to grant the presiding officer the authority to take official notice of generally accepted technical or scientific matters within CalRecycle's field of expertise, as well as facts subject to judicial notice under California law. This ensures efficiency by allowing the presiding officer to rely on established knowledge without requiring formal evidence for universally accepted or readily verifiable facts.

This subsection is necessary to streamline the hearing process by permitting the presiding officer to acknowledge and apply facts or technical information that are undisputed or widely recognized. This aligns with Government Code section 11515, which allows presiding officers in formal administrative hearings to take official notice of facts that could be judicially noticed in California. Judicially noticeable facts include matters such as laws, regulations, and facts of common knowledge that are not reasonably subject to dispute.

Additionally, this provision is critical in CalRecycle's context, where hearings may involve complex technical or scientific matters related to waste management, recycling, or environmental compliance. Allowing official notice of accepted technical knowledge prevents unnecessary delays and reduces the burden on parties to introduce evidence for facts that are already widely acknowledged in the field.

#### **Subsection (g)**

The purpose of this subsection is to require that a party provide evidence on an issue where the necessary facts are uniquely within that party's knowledge and competence, even if the party does not bear the ultimate burden of proof in the case. This ensures that all relevant and essential information is made available to the presiding officer for a fair resolution of the matter.

This subsection is necessary to address circumstances where essential facts relevant to the case are solely within the knowledge or control of one party. The rule prevents unfair outcomes that could occur if a party fails to disclose critical evidence within its possession. This principle is grounded in the judicial precedent established in *Morris v. Williams* (1967) 67 Cal.2d 733, 760. This provision ensures that the hearing process is fair and that decisions are based on a complete evidentiary record. By requiring disclosure in these situations, the subsection promotes transparency, efficiency, and fairness in the adjudication process.

#### **Subsection (h)**

The purpose of this subsection is to establish that if a party offers weaker or less satisfactory evidence when stronger and more satisfactory evidence is reasonably available to them, the weaker evidence will be given less weight. This rule ensures that parties present the best evidence available to support their claims and encourages the reliability and credibility of the evidentiary record.

This subsection is necessary to promote the submission of the highest-quality evidence in administrative hearings, ensuring the presiding officer has a reliable basis for decision-making. The rule is grounded in the well-established evidentiary principle articulated in California Evidence Code section 412, which provides that weaker evidence is suspect when stronger evidence is available but not offered. Without this provision, parties might strategically rely on less satisfactory evidence to avoid scrutiny, undermining the fairness and integrity of the hearing process. This rule reinforces the importance of presenting a complete and reliable evidentiary record while maintaining flexibility in evaluating the weight of the evidence presented.

#### **Subsection (i)**

The purpose of this subsection is to specify a factor the presiding officer may consider when drawing inferences from the evidence or facts presented in the case. The presiding officer may consider a party's failure to explain or deny evidence or facts against them or the willful suppression of relevant evidence.

This subsection is necessary to provide a framework for the presiding officer to assess the reliability and completeness of the evidence and to account for actions or omissions by a party that may affect the evidentiary record. It aligns with principles found in California Evidence Code section 413, which permits inferences to be drawn when a party fails to explain or deny evidence that is within their knowledge. By incorporating this principle, the rule ensures that the presiding officer can account for strategic omissions or the withholding of evidence by a party, promoting fairness and transparency in the adjudication process. The subsection reinforces the importance of full disclosure and cooperation in administrative hearings, ensuring decisions are based on a complete and reliable evidentiary record.



## **SECTION 17063.22 Confidentiality, Redactions, and Protective Orders**

### **Subsection (a)**

The purpose of this subsection is to establish that all documents and exhibits submitted to the CHO are presumed to be public records unless confidentiality is otherwise required by law. This ensures transparency and aligns with California's commitment to open government and public access to administrative proceedings.

This subsection is necessary to clarify the status of documents and exhibits submitted in informal hearings, ensuring that parties and the public understand that such materials are subject to public disclosure unless a legal requirement for confidentiality applies. The provision aligns with the California Public Records Act (CPRA) (Gov. Code, § 7920.000 et seq.), which presumes that records held by public agencies are open to public inspection unless explicitly exempted. The CPRA does not require disclosure of records exempted or prohibited pursuant to federal or state law. (Gov. Code, § 7927.705.) By codifying this presumption, the subsection supports accountability and public trust in the hearing process while recognizing the need to safeguard confidential or sensitive information as required by law.

### **Subsection (b) and subsections (b)(1)–(7)**

The purpose of this subsection is to require parties to redact sensitive personal information before submitting documents or exhibits to the CHO. Redacting information such as Social Security numbers, driver's license numbers, dates of birth, financial account numbers, and the names of minors protects individuals' privacy and ensures alignment with established state and federal standards.

This subsection is necessary to safeguard sensitive personal information from public disclosure during administrative proceedings. California Rules of Court, Rule 1.201 makes filers responsible for redacting Social Security numbers and financial account numbers from public filings, while California Rules of Court, Rule 2.503 requires courts to redact driver's license numbers, dates of birth, medical and psychiatric information, Criminal Identification and Information and National Crime Information numbers, and other personal identifiers before granting public access to records. Additionally, Federal Rule of Civil Procedure 5.2 mandates the use of initials instead of full names for minors to protect their privacy in public filings. Accordingly, this provision aligns with existing laws and policies, balancing the need for transparency with the protection of personal privacy. Without these safeguards, the risk of identity theft, fraud, and privacy violations increases, which could harm individuals involved in hearings.

### **Subsection (c)**

The purpose of this subsection is to provide a mechanism for parties to protect sensitive personal information when redactions are impracticable or when the information is necessary to prove a material fact in dispute. It allows parties to request that the

relevant page(s) containing sensitive information be submitted under a protective order, ensuring both privacy and the ability to present necessary evidence.

This subsection is necessary to address situations where redacting sensitive personal information from a document would render it unintelligible or ineffective as evidence. For example, cases involving financial transactions, medical records, or other detailed documents may contain sensitive data that cannot be redacted without obscuring material facts. By allowing these pages to be submitted under a protective order, the subsection ensures that essential evidence can be presented while maintaining the privacy and confidentiality of sensitive information. Without this provision, parties might be forced to choose between withholding critical evidence or exposing sensitive personal information unnecessarily.

This provision aligns with practices under California Code of Civil Procedure section 2031.060, which allows for protective orders in discovery to safeguard sensitive information, and with California Rules of Court, Rule 2.550, which governs the sealing of records containing confidential information.

#### **Subsection (d)**

The purpose of this subsection is to establish a clear procedure for parties to request a protective order from the CHO. By requiring a party to explain the reasons for the request and identify the specific information or documents requiring protection, this subsection ensures that protective orders are granted only when justified and appropriately limited in scope.

This subsection is necessary to provide a structured and transparent process for requesting protective orders in administrative hearings. Protective orders are a critical tool for safeguarding sensitive personal, financial, or confidential information from unnecessary disclosure. Requiring parties to submit a formal request ensures that the presiding officer has sufficient information to evaluate the need for protection while balancing transparency and the public's right to access records.

## **SECTION 17063.23 Use of Affidavits**

### **Subsection (a)**

The purpose of this subsection is to allow parties to submit affidavits as evidence in informal hearings before the CHO, providing a flexible and efficient method of presenting evidence without requiring live testimony in every instance.

This subsection is necessary to streamline the evidentiary process in informal administrative hearings. Affidavits are widely recognized as a practical and reliable form of evidence in administrative law, especially in informal settings where procedural efficiency is essential. Allowing affidavits reduces the need for live witnesses when written statements are sufficient to establish facts. This provision aligns with Government Code section 11514, which authorizes the use of affidavits in formal administrative hearings, ensuring consistency with established practices while maintaining fairness and efficiency in the adjudicative process.

### **Subsection (b)**

The purpose of this subsection is to ensure the authenticity and accountability of the statements provided within affidavits by including a clear declaration of truthfulness and the location and date of execution.

This subsection is necessary to establish the reliability and credibility of affidavits submitted in informal hearings. Requiring affidavits to be signed under penalty of perjury ensures that the statements are truthful and made in good faith, aligning with standards for sworn testimony in administrative and judicial proceedings. This approach is consistent with Government Code section 11514, which governs the use of affidavits in formal administrative hearings.

### **Subsection (c)**

The purpose of this subsection is to establish a process for parties to notify opposing parties of their intent to introduce an affidavit as evidence and provide the opposing parties an opportunity to request to cross-examine the person who made the affidavit. This ensures fairness by allowing parties to challenge the content of affidavits while maintaining the efficiency of the hearing process.

This subsection is necessary to balance the use of affidavits in informal hearings with procedural fairness. By requiring parties to provide notice and an opportunity for cross-examination, this rule aligns with due process principles, ensuring that opposing parties can contest the reliability or credibility of affidavit statements if they choose to do so. The 14-day notice period allows adequate time for the opposing party to review the affidavit and decide whether cross-examination is necessary, while the seven-day response period ensures timely resolution of whether the affiant will testify or the affidavit will be introduced as administrative hearsay. This provision aligns with the principles outlined in Government Code section 11514, which allows affidavits to be

used in administrative hearings but grants parties the right to request cross-examination.

### **Subsection (c)(1)**

The purpose of this subsection is to establish that if no timely request for cross-examination of the affiant is made, the right to cross-examine is waived. This ensures that the affidavit, if admitted into evidence, will be treated as though the affiant had testified orally, providing clarity and efficiency in the hearing process.

This subsection is necessary to promote procedural efficiency and establish clear consequences for failing to request cross-examination within the designated timeframe. By treating the affidavit as equivalent to oral testimony when cross-examination is waived, the rule ensures that evidence is properly weighed and considered without unnecessary procedural delays. This approach aligns with Government Code section 11514, which allows affidavits to be admitted as evidence in formal administrative hearings and requires parties to exercise their right to request cross-examination in a timely manner.

### **Subsection (c)(2)**

The purpose of this subsection is to clarify the evidentiary treatment of an affidavit when a party has timely requested cross-examination, but the affiant does not testify at the hearing. In such cases, the affidavit may still be introduced but will be treated as hearsay, ensuring it is given limited weight consistent with due process principles.

This subsection is necessary to balance the utility of affidavits in streamlining the hearing process with the rights of parties to challenge evidence through cross-examination. Treating an affidavit as hearsay when the affiant is requested but unavailable ensures fairness by reducing its evidentiary weight, as the opposing party is deprived of the opportunity to test the credibility and reliability of the statements. This approach aligns with Government Code section 11513, which permits hearsay evidence in administrative hearings but limits its sufficiency for establishing facts unless corroborated.

### **Subsection (d)**

The purpose of this subsection is to establish a clear and standardized notice requirement for parties intending to introduce an affidavit in lieu of oral testimony. By requiring a separate document titled “Notice of Intent to Use Affidavit in Lieu of Oral Testimony,” this subsection ensures that the opposing party is explicitly informed of their right to request cross-examination and the deadline for doing so.

This subsection is necessary to ensure that parties have adequate and unambiguous notice when an affidavit will be used as evidence in place of oral testimony. The required notice format provides a clear explanation of the party’s rights, including the right to request cross-examination of the affiant and the deadline for making such a

request. This promotes procedural fairness by ensuring that opposing parties are fully informed and have an opportunity to act within the specified timeframe. The structured language of the notice aligns with due process requirements and the principles outlined in Government Code section 11514, which permits the use of affidavits in lieu of testimony in formal administrative hearings.

## **SECTION 17063.24 Voluntary Withdrawal**

### **Subsection (a)**

The purpose of this subsection is to allow the respondent to move to withdraw their case at any time before a decision is issued. By permitting the presiding officer to grant the motion without requiring a response from CalRecycle, this provision streamlines the process and minimizes unnecessary delays.

This subsection is necessary to give respondents flexibility to end their participation in a case when they determine it is no longer in their interest to proceed. It ensures that the process for withdrawal is clear and efficient, reducing unnecessary administrative burdens for the CHO and CalRecycle. Allowing motions to withdraw to be granted without waiting for a response from CalRecycle aligns with the informal nature of the proceedings and avoids wasting resources on cases the respondent no longer wishes to pursue.

### **Subsection (b)**

The purpose of this subsection is to allow parties to file a joint motion to withdraw a case. This ensures that when all parties agree to terminate the proceedings, they can do so efficiently and with mutual consent.

This subsection is necessary to provide a mechanism for cases to be withdrawn by mutual agreement of the parties. Allowing a joint motion for withdrawal promotes efficiency by avoiding unnecessary hearings or administrative actions when the parties have resolved the matter or no longer wish to proceed. This aligns with the goals of informal administrative hearings, which prioritize flexibility and the resolution of disputes without unnecessary procedural burdens.

## **SECTION 17063.25 Default Order**

### **Subsection (a)**

The purpose of this subsection is to authorize the presiding officer to find a party in default if they fail, without good cause, to appear at a scheduled conference or hearing. This provision ensures accountability for participation in the hearing process and allows proceedings to move forward efficiently when a party has abandoned participation.

This subsection is necessary to prevent the waste of resources and avoid unnecessary expenses in cases where a party fails to appear without good cause. Hearings involve costs such as booking court reporters, interpreters, and other logistical arrangements. When a party abandons their case by not attending a mandatory conference, these expenses would be incurred unnecessarily by continuing to the hearing. Allowing the presiding officer to issue a default finding discourages such non-appearance and ensures that resources are allocated effectively. Additionally, the “good cause” exception ensures fairness by protecting parties who may have legitimate reasons for failing to appear, such as emergencies or unforeseen circumstances.

### **Subsection (a)(1)**

The purpose of this subsection is to specify that a default by the respondent shall result in the dismissal of the case, with prejudice. This ensures finality in cases where the respondent has abandoned the process and provides clarity on the consequences of defaulting.

This subsection is necessary to establish the outcome of a respondent’s default in a clear and enforceable manner. Dismissing the case with prejudice prevents respondents from relitigating the same issue after failing to participate in the hearing they requested. This rule avoids unnecessary delays, wasted resources, and repeated attempts to resolve the same issue. By providing finality, it allows CalRecycle to act on its decision and ensures that administrative efficiency is maintained.

### **Subsection (a)(2)**

The purpose of this subsection is to establish that a default by CalRecycle shall result in the reversal of its initial decision in the case. This provision ensures fairness by holding CalRecycle accountable for its participation in the hearing process and protecting the respondent’s rights.

This subsection is necessary to provide clarity and finality in situations where CalRecycle fails to appear without good cause. By specifying that a default results in a reversal of CalRecycle’s initial decision, the rule ensures that respondents are not left in procedural limbo or subject to indefinite delays due to CalRecycle’s non-appearance. It promotes fairness by holding both parties equally accountable for participating in the hearing process.

### **Subsection (b)**

The purpose of this subsection is to allow a defaulting party to request reinstatement of a proceeding upon a showing of good cause for their failure to appear. By requiring the request to be submitted within 14 days of service of the default order, this provision ensures timely resolution while maintaining fairness in the administrative process.

This subsection is necessary to provide a mechanism for addressing defaults in cases where the defaulting party can demonstrate a reasonable and justifiable basis for their non-appearance. The 14-day deadline ensures that requests for reinstatement are made promptly, preventing unnecessary delays in the adjudication process. By allowing reinstatement only upon a showing of sufficient facts and good cause, the rule balances efficiency with the need to provide relief for parties who may have missed a hearing due to unforeseen or unavoidable circumstances. This provision aligns with Government Code section 11520, which allows respondents to move to set aside a default decision in formal administrative hearings upon a showing of good cause.



## **SECTION 17063.26 Settlement Conferences and Agreements**

### **Subsection (a)**

The purpose of this subsection is to establish the procedure for notifying the CHO of a resolution that terminates a case. It requires the parties to provide written notice of final resolution and mandates that hearing dates be vacated upon confirmation of the resolution. Additionally, it specifies that documentation of the resolution, such as a signed settlement or order, must be filed with the CHO to formalize the termination of the matter.

This subsection is necessary to ensure that the CHO is promptly informed of case resolutions to avoid wasting resources on preparing for hearings that are no longer needed. Requiring written notice and supporting documentation provides transparency and confirms that the case has been resolved in a manner acceptable to all parties. The subsection also promotes efficiency by clarifying that hearing dates will be vacated only upon proper notification, preventing confusion or scheduling conflicts.

### **Subsection (b)**

The purpose of this subsection is to establish a procedure for respondents to request a settlement conference before the hearing. If CalRecycle agrees to participate, the CHO will facilitate by scheduling a date and time for the conference. This provision encourages parties to resolve disputes collaboratively and efficiently without proceeding to a full hearing.

This subsection is necessary to provide an opportunity for parties to negotiate and potentially resolve their disputes before expending additional time and resources on a hearing. Government Code section 11420.10 authorizes agencies to refer disputes to alternative dispute resolution. Settlement conferences are a well-established administrative tool that promotes the efficient resolution of disputes and reduces the need for adversarial proceedings. Allowing respondents to request a settlement conference on the Notice of Defense form or through a separate filing ensures flexibility and accessibility in the process. Requiring mutual agreement between the respondent and CalRecycle ensures that settlement conferences are only scheduled when both parties are willing to engage in good-faith discussions. This approach aligns with Government Code section 11415.60, which encourages settlement agreements in administrative proceedings.

### **Subsection (c)**

The purpose of this subsection is to ensure that all parties or representatives attending a settlement conference are knowledgeable about the facts and issues in the case and have the authority, or can promptly obtain it, to negotiate settlement terms. This provision promotes meaningful and productive settlement discussions.

This subsection is necessary to prevent delays and ensure the efficiency of settlement conferences. Requiring parties or representatives to be familiar with the case ensures they can actively participate in discussions and address the issues in dispute. Additionally, mandating that attendees have settlement authority, or the ability to obtain it immediately by telephone, ensures that the parties can negotiate in good faith and reach binding agreements without unnecessary delays. The provision aligns with Government Code section 11415.60, which encourages settlements in administrative proceedings, by ensuring that settlement conferences are structured to achieve efficient and effective resolutions. It also aligns with the requirements for formal administrative hearings. (Cal. Code Regs., tit. 1, § 1028.)

#### **Subsection (d)**

The purpose of this subsection is to require each party to submit a written settlement conference statement to the CHO at least five business days before the settlement conference. The statement must include a detailed statement of facts and a good-faith settlement proposal to ensure productive and informed discussions during the conference.

This subsection is necessary to promote efficiency and meaningful dialogue during settlement conferences. By requiring parties to submit a written statement in advance, the settlement hearing officer is given sufficient time to understand each party's position, the relevant facts, and potential avenues for resolution. The inclusion of a good-faith settlement proposal encourages parties to approach the conference with serious intent to resolve the dispute. The requirement aligns with the authority for ALJs to require settlement conference statements in formal administrative hearings. (Cal. Code Regs., tit. 1, § 1028.)

#### **Subsection (d)(1)**

The purpose of this subsection is to ensure the confidentiality of settlement conference statements, other settlement materials, and settlement discussions. By preventing their disclosure to the presiding officer and excluding them from the case record unless the parties agree otherwise, this provision fosters open and candid communication during settlement negotiations.

This subsection is necessary to encourage parties to engage in good-faith settlement discussions without fear that their proposals or statements will prejudice the presiding officer's decision should the case proceed to a hearing. Confidentiality in settlement negotiations is a well-established principle in both administrative and judicial settings, ensuring that parties can explore potential resolutions freely and without reservation. This subsection is written to comply with the protection of communications provisions of Government Code section 11420.30.

#### **Subsection (d)(2)**

The purpose of this subsection is to allow parties to designate their settlement conference statements as confidential, preventing them from being shared with opposing parties or their representatives. By including a clear process for labeling such statements with “Confidential” on the first page, this provision protects sensitive information while maintaining procedural clarity.

This subsection is necessary to provide parties with a mechanism to safeguard sensitive information included in their settlement conference statements. In some cases, parties may need to disclose strategic, personal, or proprietary details to the hearing officer facilitating the settlement conference that they are not prepared to share with opposing parties. Allowing parties to mark their statements as confidential ensures that they can fully engage in the settlement process without fear of unintended disclosure or misuse of sensitive information.

#### **Subsection (e)**

The purpose of this subsection is to require that any settlement reached in a case be documented in a written stipulation, settlement agreement, consent order, or an oral agreement placed on the record. This ensures that settlements are formalized and enforceable.

This subsection is necessary to provide a clear and consistent process for documenting settlements reached during administrative proceedings. By requiring written or recorded agreements, the rule ensures that the terms of the settlement are clearly understood by all parties and can be enforced if disputes arise later. Requiring written or recorded settlements promotes transparency and accountability while protecting the rights of all parties involved.

#### **Subsection (f)**

The purpose of this subsection is to ensure that, unless the parties agree otherwise, the hearing officer who facilitates the settlement conference shall not preside over the hearing on the merits. This provision promotes impartiality by separating the roles of settlement facilitator and decision-maker.

This subsection is necessary to maintain the integrity and fairness of the hearing process. By requiring the hearing officer who conducts the settlement conference to be different from the one presiding over the hearing, the rule prevents potential bias or the appearance of bias. Settlement discussions often involve candid communications and disclosures that could inadvertently influence the hearing officer’s judgment if they were to later decide the case on its merits. Allowing parties to stipulate otherwise provides flexibility in cases where the parties are comfortable with the same hearing officer presiding over both phases.

## **SECTION 17063.27 Decisions**

### **Subsection (a)**

The purpose of this subsection is to require the presiding officer to issue a written decision within 60 days after the case is submitted. This ensures that all decisions are documented, based on the record, and provide clarity on the outcome of the case in compliance with the APA.

This subsection is necessary to comply with the APA Bill of Rights (Gov. Code, § 11425.10), which lists decision requirements in Government Code section 11425.50. This section requires that administrative decisions be in writing, based on the record, and include a statement of the factual and legal basis for the decision. Establishing a 60-day deadline ensures that decisions are issued in a timely manner, preventing unnecessary delays that could leave parties uncertain about the resolution of their case.

### **Subsection (a)(1)**

The purpose of this subsection is to require that the presiding officer's decision includes findings of fact and conclusions of law that support the determination. This ensures that the decision is well-reasoned, transparent, and provides a clear explanation of how the evidence and legal principles were applied to reach the outcome.

This subsection is necessary to align with Government Code section 11425.50, which mandates that administrative decisions include a statement of the factual and legal basis for the decision. Findings of fact and conclusions of law are essential components of a well-documented decision, as they demonstrate that the determination is grounded in the record and based on applicable legal standards. Including these findings provides parties with clarity about the reasoning behind the decision, helping them understand why their case was decided in a particular way. It also supports due process by ensuring that decisions are not arbitrary or capricious. Furthermore, findings of fact and conclusions of law are critical for enabling meaningful judicial review, as they provide the reviewing court with the necessary context to evaluate the decision's legality and correctness.

### **Subsection (a)(2)**

The purpose of this subsection is to require that the decision or order be served on all parties within five business days of issuance. This ensures that parties are promptly notified of the outcome and can take any necessary follow-up actions in a timely manner.

This subsection is necessary to ensure the efficient and transparent resolution of administrative hearings. Prompt service of the decision aligns with principles of due process and fairness by guaranteeing that all parties receive timely notice of the outcome, preventing unnecessary delays in their ability to comply with, challenge, or act on the decision through judicial review.

### **Subsection (b)**

The purpose of this subsection is to establish that the decision becomes final and effective 30 days after service unless the decision explicitly provides a different timeline. This ensures clarity for all parties regarding when the decision takes effect, while providing flexibility for case-specific circumstances.

This subsection is necessary to provide a clear and consistent rule for when administrative decisions become final and enforceable. The 30-day timeline gives parties sufficient time to review the decision, consider their options for compliance, and take any legal actions, such as filing for reconsideration or seeking judicial review. Including the provision “unless otherwise stated” allows flexibility for decisions that may need to take effect immediately or at a later date based on statutory requirements, agreements between the parties, or unique circumstances in the case. This ensures that the timeline for finality can be tailored to meet specific needs without undermining the fairness and predictability of the administrative process.

### **Subsection (c)**

The purpose of this subsection is to allow the Director to designate all or part of a decision as a precedent decision if it includes a significant legal or policy determination of general application that is likely to recur. This ensures that important rulings can guide future cases and promote consistency in decision-making.

This subsection is necessary to comply with Government Code section 11425.60, which authorizes agencies to designate decisions as precedential. By designating such decisions as precedent, the Director ensures uniformity in the application of laws and policies across similar cases, reducing uncertainty and promoting fairness in administrative proceedings. Precedent decisions are a critical tool for providing transparency and predictability in the agency’s decision-making process. They allow parties to understand how similar cases have been resolved, aiding them in preparing for hearings or resolving disputes. This practice also ensures that significant legal and policy determinations are consistently applied, reducing the risk of arbitrary or inconsistent outcomes.

#### **Subsection (c)(1)**

The purpose of this subsection is to define what constitutes a “significant” legal or policy determination for the purpose of designating a decision or part of a decision as precedent. A determination is considered significant if it establishes a new rule of law or policy, resolves an unsettled legal issue, or refines, clarifies, modifies, or overrules a prior precedent decision. This definition provides clear criteria for identifying which decisions merit precedential status.

This subsection is necessary to ensure consistency and transparency in the designation of precedent decisions under Government Code section 11425.60. By establishing clear criteria, this provision ensures that only cases with broad or meaningful implications are

designated as precedent, promoting uniformity in administrative adjudications. The language in this subsection is modeled after California Code of Regulations, title 22, section 5109, which provides a similar framework for determining when a decision contains a significant legal or policy determination.

### **Subsection (c)(2)**

The purpose of this subsection is to define when a legal or policy determination is considered “of general application” for the purpose of designating a decision or part of a decision as precedent. Specifically, a determination qualifies as being of general application if the facts are sufficiently common to provide guidance to future cases, clearly illuminate the legal or policy issue, and are significant to the parties, the public, or CalRecycle’s operations. This ensures that decisions with broad, practical applicability can be designated as precedent.

This subsection is necessary to ensure that precedent decisions are meaningful and provide consistent guidance for similar cases. Government Code section 11425.60 allows agencies to designate decisions as precedent when they contain significant legal or policy determinations. This provision clarifies that decisions with broad applicability and relevance beyond the individual case are most appropriate for designation, supporting uniformity and fairness in administrative adjudications. The language in this subsection is modeled after California Code of Regulations, title 22, section 5109.

### **Subsection (c)(3)**

The purpose of this subsection is to define when a legal or policy determination is “likely to recur” for the purpose of designating a decision or part of a decision as precedent. A determination is likely to recur if it is of continuing public interest due to its frequency or the ongoing likelihood of similar issues arising in future cases. This ensures that precedent decisions address matters that are relevant and useful for resolving recurring disputes.

This subsection is necessary to ensure that precedent decisions are designated for cases involving issues of enduring significance. Under Government Code section 11425.60, administrative agencies may designate decisions as precedent if they include significant legal or policy determinations. By defining “likely to recur,” this subsection establishes clear criteria for identifying issues that warrant precedential treatment because of their ongoing relevance to agency operations, the regulated community, or the public. The language in this subsection is modeled after California Code of Regulations, title 22, section 5109.

### **Subsection (c)(4)**

The purpose of this subsection is to require CalRecycle to maintain a publicly accessible index of decisions designated as precedent. This ensures transparency, allows stakeholders to understand how similar cases have been decided, and promotes consistency in administrative decision-making.

This subsection is necessary to comply with Government Code section 11425.60, which requires state agencies that designate precedent decisions to organize and make them publicly available in an indexed format. By providing a centralized, organized record of precedent decisions, this provision helps prevent inconsistent rulings, improves the efficiency of administrative hearings, and allows parties to anticipate how similar legal or policy issues may be resolved. A public index also enhances due process by ensuring that precedent decisions are readily available and not applied arbitrarily.

## **SECTION 17063.28 Correction of Clerical Errors**

### **Subsection (a)**

The purpose of this subsection is to allow a party to file a motion requesting that the CHO correct a clerical error in the decision within 15 days after service. This ensures that minor, non-substantive errors, such as typographical mistakes, miscalculations, or omissions, can be corrected promptly without reopening the substantive issues of the case.

This subsection is necessary to ensure the accuracy and reliability of administrative decisions in CalRecycle's informal hearings. This provision aligns with a similar process that exists to correct technical and minor errors in decisions from formal administrative hearings. (Cal. Code Regs., tit. 1, § 1048.) Providing a clear process for correcting clerical errors enhances procedural fairness by ensuring that decisions accurately reflect the presiding officer's intent. The 15-day timeframe allows parties a reasonable opportunity to identify and request corrections while ensuring that decisions are finalized without unnecessary delay.

### **Subsection (a)(1)**

The purpose of this subsection is to define what constitutes a clerical error for purposes of correction. Providing clear examples ensures that only minor, non-substantive mistakes are subject to correction under this process.

This subsection is necessary to distinguish clerical errors from substantive errors that impact the merits of a case. Clerical errors are unintentional mistakes that do not alter the outcome of a decision but may cause confusion or misrepresentation if left uncorrected. By explicitly identifying the types of errors that qualify for correction, this provision ensures consistency and prevents misuse of the correction process.

### **Subsection (a)(1)(A)**

The purpose of this subsection is to clarify that typographical errors in names, dates, statutory citations, or mathematical calculations qualify as clerical errors that may be corrected through a motion.

This subsection is necessary to establish a clear and objective standard for what constitutes a correctable clerical error. Typographical errors in names, dates, statutory citations, or calculations can create confusion or impact the enforcement of the decision. However, these errors do not involve substantive findings or legal conclusions and should be subject to correction without reopening the case.

### **Subsection (a)(1)(B)**

The purpose of this subsection is to clarify that unintended omissions of information, such as restitution or civil penalty amounts, qualify as clerical errors that may be



corrected through a motion. This ensures that decisions accurately reflect the presiding officer's intent and include all required information necessary for enforcement.

This subsection is necessary to prevent confusion and enforcement issues that may arise if a decision inadvertently omits critical information, such as the amount of restitution or a civil penalty. While these omissions do not change the legal basis of the decision, they may lead to disputes or difficulties in implementation. Allowing corrections ensures that decisions remain clear, enforceable, and consistent with the presiding officer's findings.

#### **Subsection (a)(2)**

The purpose of this subsection is to require that a motion to correct a clerical error clearly state the specific grounds for correction and explain how the correction aligns with the presiding officer's original intent and improves the accuracy of the record. This ensures that the correction process is used only for legitimate clerical errors and prevents misuse of the process to seek substantive changes.

This subsection is necessary to ensure that motions to correct clerical errors are well-founded and properly limited to non-substantive mistakes. Without a requirement to specify the grounds for correction, parties may attempt to use this process to improperly challenge the substance of the decision rather than correct minor mistakes. By requiring an explanation of how the correction clarifies the presiding officer's original intent, this provision ensures that corrections remain non-substantive and do not alter the outcome of the case.

#### **Subsection (a)(3)**

The purpose of this subsection is to require that copies of the motion to correct a clerical error be served on all parties. This ensures that all parties are properly notified of the requested correction and have an opportunity to respond, promoting procedural fairness and transparency.

This subsection is necessary to uphold due process by ensuring that no party is excluded from the correction process. Requiring service of the motion prevents ex parte communications and guarantees that all participants are aware of potential modifications to the decision. Additionally, this provision aligns with section 17063.16, which establishes that motions must be served on all parties. By maintaining consistency with the existing procedural requirements for motions, this subsection helps to streamline administrative procedures and avoid confusion about service obligations.

#### **Subsection (a)(4)**

The purpose of this subsection is to clarify that a party is not required to file a motion to correct a clerical error before seeking judicial review of a decision. This ensures that parties retain the right to challenge a decision in court without first pursuing a correction through the CHO's administrative process.

This subsection is necessary to preserve access to judicial review and prevent unnecessary procedural hurdles for parties seeking relief in court. While the option to correct clerical errors provides an efficient administrative remedy for minor errors, it should not be a mandatory prerequisite for judicial review. By clarifying that judicial review remains available regardless of whether a party moves for correction, this rule prevents confusion and ensures that clerical error motions remain an optional administrative remedy rather than an obstacle to court access.

#### **Subsection (a)(5)**

The purpose of this subsection is to clarify that a motion for correction of a clerical error cannot be used as a means to seek reconsideration of the decision. This ensures that the correction process remains limited to addressing non-substantive errors, such as typographical mistakes or omissions, rather than allowing parties to relitigate or challenge the merits of the decision.

This subsection is necessary to preserve the distinction between clerical corrections and reconsideration requests. A clerical correction motion is intended to fix minor, inadvertent errors, while a request for reconsideration typically seeks to challenge factual findings, legal conclusions, or substantive determinations. Allowing parties to use a clerical error motion as a means to seek reconsideration would undermine procedural efficiency and create unnecessary delays. This provision aligns with similar procedures in formal administrative hearings. (Cal. Code Regs., tit. 1, § 1048.)

#### **Subsection (b)**

The purpose of this subsection is to establish that a CHO hearing officer has the authority to grant or deny a motion for correction of a clerical error. This ensures that a designated decision-maker is responsible for reviewing and ruling on the motion in a timely and structured manner.

This subsection is necessary to provide clarity and finality in the clerical error correction process. Without a designated decision-maker, there could be confusion about who has the authority to rule on a correction request. This provision aligns with standard administrative procedures that authorize presiding officers or designated officials to rule on procedural motions, including corrections to administrative decisions.

#### **Subsection (b)(1)**

The purpose of this subsection is to clarify the available remedies when a motion to correct a clerical error is granted. It provides that the CHO hearing officer may either reissue the decision with the necessary modifications or set the matter for further proceedings to clarify the record, ensuring that the correction process is both structured and adaptable to the nature of the error.

This subsection is necessary to ensure procedural consistency in how clerical errors are corrected. Some errors, such as typographical mistakes or omitted penalty amounts,

can be fixed by simply reissuing the decision with modifications. However, in cases where the record requires further clarification, the presiding officer must have the discretion to set additional proceedings to resolve the issue fairly. Allowing re-issuance of the decision avoids unnecessary delays while permitting further proceedings ensures fairness and transparency when clarification is required.

### **Subsection (b)(2)**

The purpose of this subsection is to require that when a motion to correct a clerical error is denied, the CHO hearing officer must issue a written order documenting the denial and making it part of the official case record. This ensures transparency and provides a clear basis for the decision.

This subsection is necessary to establish a clear, documented process for handling denied correction motions. By requiring a written order, this provision ensures that all parties are notified of the outcome and that there is an official record of the presiding officer's decision. This documentation may be important if a party seeks judicial review, as it provides evidence that the correction request was considered and ruled upon.

### **Subsection (c)**

The purpose of this subsection is to clarify that the presiding officer or Director has the authority to correct clerical errors on their own motion without requiring a party to file a motion. This ensures that minor, non-substantive errors can be corrected proactively, maintaining the accuracy and integrity of the decision. However, any modification must be made before the decision becomes effective to ensure procedural finality.

This subsection is necessary to ensure that clerical mistakes do not remain in final decisions simply because no party filed a motion for correction. Errors such as typographical mistakes, omitted penalty amounts, or incorrect statutory citations could create confusion or enforcement issues. Allowing the presiding officer or Director to correct such errors on their own motion ensures that decisions accurately reflect the intended findings and rulings. Additionally, requiring that any modification occur before the decision's effective date ensures predictability and finality in the administrative process.

### **Subsection (d)**

The purpose of this subsection is to ensure that any correction to a clerical error in the decision is promptly communicated to all parties by requiring the CHO to serve a copy of the correction within five business days. This guarantees that all parties are informed of any modifications to the decision and can take appropriate action if necessary.

This subsection is necessary to uphold transparency and procedural fairness in the correction process. When a clerical error is corrected, parties must be promptly notified to avoid confusion or reliance on an outdated version of the decision. The five-business-

day timeframe ensures that corrections are distributed in a timely manner while allowing the CHO sufficient time to process and serve them.

## **SECTION 17063.29 Judicial Review**

### **Subsection (a)**

The purpose of this subsection is to establish that any party may seek judicial review of the decision by filing a petition for writ of mandate within 30 days after service of the decision. This provision ensures that parties are aware of their right to challenge an adverse decision in court and provides a clear timeframe for doing so.

This subsection is necessary to ensure compliance with Code of Civil Procedure section 1094.5, which governs judicial review of administrative decisions through writ proceedings. By explicitly referencing this statute, the regulation aligns with existing legal standards and provides clarity on the appropriate mechanism for judicial review. The 30-day deadline ensures that administrative decisions achieve finality while still allowing a reasonable period for parties to seek court intervention if they believe the decision was unlawful or procedurally improper. This timeline aligns with that used in formal administrative hearings. (Gov. Code, § 11523.) Without this provision, parties might face uncertainty about the timeline for filing a writ petition, leading to procedural disputes or missed opportunities for review.

### **Subsection (a)(1)**

The purpose of this subsection is to clarify that filing a petition for writ of mandate does not automatically stay any required corrective action or the accrual of assessed penalties imposed by the decision. This ensures that administrative enforcement actions remain effective unless a court grants a stay.

This subsection is necessary to ensure that filing for judicial review does not delay enforcement of CalRecycle's administrative decisions. Without this provision, parties might incorrectly assume that initiating a writ proceeding suspends their obligations under the decision, leading to noncompliance, enforcement delays, or potential harm to public interests. This provision aligns with Code of Civil Procedure section 1094.5, which allows but does not require parties to request a stay of the administrative order pending the court's judgment on the petition.

### **Subsection (a)(2)**

The purpose of this subsection is to establish that failure to file a petition for writ of mandate within 30 days precludes a party from later contesting the validity of the decision in any subsequent judicial proceedings aimed at enforcing it. This provision ensures finality in administrative adjudications and prevents parties from circumventing the established appeal process.

This subsection is necessary to enforce statutes of limitations, which serve important public policy functions by promoting certainty, efficiency, and fairness in legal disputes. Courts have long recognized that administrative decisions must achieve finality within a designated timeframe to maintain the integrity of the regulatory system. Additionally, this

provision is consistent with the doctrine of res judicata, which prevents a party from relitigating issues that have been resolved in a final administrative decision. When a party fails to challenge an agency's decision within the legally required timeframe, they are bound by that decision and cannot later attempt to dispute its validity in enforcement proceedings.

## **SECTION 17063.30 Reporting and Transcripts**

### **Subsection (a)**

The purpose of this subsection is to establish that hearings shall be recorded electronically or transcribed by a certified court reporter, and that the record made by the CHO shall be the official record of the hearing. This ensures that there is an accurate and reliable record of all proceedings for use in administrative review and potential judicial review.

This subsection is necessary to preserve the integrity of the hearing process by ensuring that an official record exists, which can be referenced in the event of an appeal or other post-hearing proceedings. Establishing a clear, official hearing record provides a basis for appellate review. Without an official record, parties would lack an authoritative source to resolve disputes regarding the proceedings, which could undermine the enforceability of administrative decisions. This provision aligns with the requirements for a formal administrative hearing, which requires a court reporter or electronic recording upon party consent. (Gov. Code, § 11512.)

### **Subsection (a)(1)**

The purpose of this subsection is to clarify that parties may request a verbatim transcript of the hearing but must bear the expense of obtaining it. This ensures that parties have the option to obtain a complete record of the proceedings without imposing unnecessary costs on CalRecycle.

This subsection is necessary to balance access to hearing records with administrative efficiency and cost management. Requiring CalRecycle to provide verbatim transcripts in all cases would impose unnecessary financial and administrative burdens. Instead, this provision allows parties to request transcripts at their own expense, ensuring they can obtain a detailed record if needed while maintaining fiscal responsibility. This provision aligns with California Code of Regulations, title 1, section 1038, which provides that parties in formal administrative hearings may request the record at their own expense.

### **Subsection (a)(2)**

The purpose of this subsection is to ensure that the official recording or transcript of the hearing is included in the administrative record. This guarantees that a complete and accurate record of the proceedings is maintained for future reference, appeals, or judicial review.

This subsection is necessary to ensure that all hearings have a reliable and accessible record, consistent with administrative due process requirements. The official recording or transcript serves as the definitive source of what transpired during the hearing, ensuring transparency, accuracy, and procedural fairness.

### **Subsection (b)**

The purpose of this subsection is to ensure that if a party relies on a transcript in a motion or briefing, the entire transcript is filed with the CHO. This ensures that the presiding officer and other parties have access to the full context of the cited testimony, preventing selective or misleading use of the record. Additionally, requiring transcript citations to include page numbers and speaker identification enhances clarity and efficiency in reviewing the referenced material.

This subsection is necessary to preserve the accuracy and integrity of the administrative record and to prevent disputes over incomplete or out-of-context transcript citations. When a party references a portion of a transcript, requiring the full transcript to be filed ensures that the presiding officer and opposing parties have access to the entire record to evaluate the accuracy and relevance of cited testimony. This helps keep the hearing process fair and transparent, preventing parties from selectively quoting testimony without providing full context. The citation requirement maintains judicial efficiency by reducing ambiguity and streamlining review.

### **Subsection (c)**

The purpose of this subsection is to establish that the CHO will arrange for the preparation and filing of a transcript for judicial review only after receiving full payment for the transcript costs, except where a party has been granted in forma pauperis status by the superior court. This ensures that the CHO follows a consistent and financially responsible approach in providing transcripts while ensuring access for indigent parties.

This subsection is necessary to balance access to judicial review with responsible cost management. Preparing transcripts is costly and requiring full payment before preparation ensures that public resources are not expended unnecessarily. By incorporating an exception for parties proceeding in forma pauperis, this subsection ensures that indigent individuals are not denied access to judicial review due to financial hardship, thereby promoting due process and fairness. This provision aligns with California Code of Regulations, title 1, section 1038, which provides that a record shall be prepared at the expense of the requesting party unless that person has been declared in forma pauperis by the superior court.



## **SECTION 17063.31 Sanctions**

### **Subsection (a)**

The purpose of this subsection is to ensure that any order imposing a sanction is issued in writing and includes factual findings supporting the sanction. Additionally, it requires the presiding officer to take specific steps before issuing sanctions to ensure fairness and due process.

This subsection is necessary to uphold transparency, procedural fairness, and due process in administrative hearings. By requiring written orders with factual findings, this provision ensures that the basis for the sanction is clearly documented, reducing ambiguity and facilitating judicial review if challenged. It further requires the order to be supported by specific facts, preventing arbitrary or unjustified sanctions. This provision aligns with established administrative law principles under the APA and formal administrative hearing practices. (See Gov. Code, §§ 11455.10–11455.30; Cal. Code Regs., tit. 1, § 1040.)

#### **Subsection (a)(1)**

The purpose of this subsection is to require the presiding officer to provide notice and an opportunity to be heard before imposing a sanction. This ensures that the affected party has a chance to respond, present relevant information, and contest the basis for the sanction before it is issued.

This subsection is necessary to safeguard procedural fairness and due process in administrative hearings. Providing advance notice and an opportunity to be heard helps prevent arbitrary sanctions and allows parties to address concerns before penalties are imposed. This ensures that sanctions are not imposed without adequate procedural protections.

#### **Subsection (a)(2)**

The purpose of this subsection is to require the presiding officer to obtain approval from the Director or the person acting in the capacity of the Director before imposing a sanction. This ensures that sanction decisions are subject to higher-level review and oversight, preventing arbitrary or excessive penalties.

This subsection is necessary to uphold accountability and procedural fairness in administrative hearings. Requiring Director approval ensures that sanctions are applied consistently across cases and align with CalRecycle's enforcement policies. This safeguard is particularly important in informal hearings, where presiding officers have significant discretion to structure hearing procedures. By requiring supervisory review before imposing penalties, this provision prevents potential overreach.

### **Subsection (b)**

The purpose of this subsection is to specify that a person may face contempt sanctions for any reason listed in Government Code section 11455.10 or for abusing the discovery process. This ensures that sanctions are applied for clear, legally recognized grounds and that parties engaging in misconduct during discovery can be held accountable.

This subsection is necessary to maintain order, efficiency, and fairness in administrative hearings. By incorporating the existing statutory contempt provisions under Government Code section 11455.10, this rule ensures that sanctions are imposed only for legally established reasons. Additionally, specifying specific abuses of the discovery process provides additional clarity that can deter misconduct during discovery.

### **Subsections (b)(1)–(b)(7)**

The purpose of these subsections is to identify specific types of discovery abuses that may result in contempt sanctions. These provisions are modeled after California Code of Civil Procedure section 2023.010, which defines discovery misconduct warranting sanctions in civil proceedings. By incorporating these well-established standards, this rule ensures fair and efficient discovery practices in administrative hearings.

These subsections are necessary to prevent abusive discovery tactics that could delay proceedings, increase costs, or unfairly prejudice opposing parties. Because discovery in informal hearings is more limited than in formal litigation, establishing clear grounds for sanctions ensures that parties do not misuse the process to obstruct or harass. These provisions prevent parties from seeking impermissible information or using discovery to harass or burden the other side. They further encourage compliance with legally authorized discovery requests and orders from the presiding officer, while deterring frivolous or unjustified discovery motions that waste resources. Additionally, the provisions reinforce a party's duty to attempt informal resolution of disputes before seeking intervention.

### **Subsection (c)**

The purpose of this subsection is to establish that if the presiding officer imposes contempt sanctions, the presiding officer shall certify the facts supporting the sanction to the superior court in the county where the case is conducted for contempt proceedings. This ensures that contempt proceedings are handled by the superior court, which has the legal authority to enforce such sanctions.

This subsection is necessary to align with Government Code section 11455.20, which provides that an administrative presiding officer may certify facts to the superior court when contempt occurs during an administrative proceeding. Because administrative agencies lack independent authority to enforce contempt sanctions, this provision ensures that serious misconduct is referred to the appropriate judicial authority for enforcement. By requiring fact certification, this rule also promotes transparency, fairness, and due process in contempt proceedings, ensuring that any sanction is supported by an adequate factual record.

### **Subsection (d)**

The purpose of this subsection is to grant the presiding officer the authority to order a party, their representative, or both to reimburse the opposing party's reasonable expenses when the presiding officer finds that the party engaged in bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This provision ensures that parties are held accountable for conduct that abuses the administrative process and wastes resources.

This subsection is necessary to deter frivolous, dilatory, or bad-faith tactics that could unfairly burden opposing parties and delay administrative proceedings. By authorizing cost-shifting, this rule discourages improper litigation tactics and promotes efficient case resolution. This provision is consistent with legal standards governing sanctions in administrative proceedings, Government Code section 11455.30, which permits administrative agencies to order a party or attorney to pay reasonable expenses incurred as a result of bad-faith actions or tactics.

#### **Subsection (d)(1)**

The purpose of this subsection is to ensure that any award of reasonable expenses resulting from bad-faith actions or frivolous tactics is supported by sworn testimony or a declaration that details specific expenses incurred. This requirement ensures transparency, accuracy, and fairness in the calculation of sanctions.

This subsection is necessary to prevent arbitrary or speculative sanctions by requiring a factual basis for cost recovery. By mandating sworn statements or declarations, this provision ensures that sanctions are based on verifiable expenses, rather than estimates or unsupported claims.

#### **Subsection (d)(2)**

The purpose of this subsection is to establish that an order to pay reasonable expenses becomes effective immediately upon issuance. This ensures that monetary sanctions for bad-faith actions or frivolous tactics are enforceable without unnecessary delay, deterring misconduct and promoting fairness in administrative proceedings.

This subsection is necessary to ensure timely enforcement of sanctions, preventing parties from engaging in further delay tactics to evade accountability. By making the order effective upon issuance, this provision ensures compliance with the presiding officer's decision and discourages further obstruction of the administrative process.

### **Subsection (e)**

The purpose of this subsection is to clarify the meaning of key terms used in this section by providing specific definitions related to sanctions. Defining these terms ensures that parties, representatives, and presiding officers understand the scope and application of sanctionable conduct and the consequences that may follow.

This subsection is necessary to promote clarity, consistency, and fairness in the enforcement of sanctions. By establishing precise definitions, this provision prevents ambiguity or misinterpretation in determining what constitutes bad-faith actions, frivolous tactics, or other sanctionable behavior.

#### **Subsection (e)(1)**

The purpose of this subsection is to define “actions or tactics” as including, but not limited to, failing to comply with a lawful order of the presiding officer or making or opposing motions. This definition clarifies the types of conduct that may be subject to sanctions, ensuring consistent and fair application of enforcement measures.

This subsection is necessary to provide clear guidance on what constitutes sanctionable conduct in administrative proceedings. By explicitly including noncompliance with lawful orders and improper motion practice, this provision prevents misuse of procedural tools to delay, obstruct, or manipulate the hearing process. This definition mirrors California Code of Civil Procedure section 128.5.

#### **Subsection (e)(2)**

The purpose of this subsection is to define “frivolous” as conduct undertaken solely for the purpose of harassing an opposing party or totally and completely without merit. This definition ensures that sanctions are applied only to actions that lack any legitimate legal or factual basis or are intended to abuse the administrative process.

This subsection is necessary to provide a clear and objective standard for determining whether an action or tactic qualifies as frivolous. This definition mirrors California Code of Civil Procedure section 128.5. By incorporating this well-established legal standard, this provision ensures that sanctions are imposed fairly and consistently, preventing abusive litigation tactics while safeguarding the rights of parties to make legitimate arguments and filings.

## **SECTION 17063.32 Amicus Briefs**

### **Subsection (a)**

The purpose of this subsection is to establish a structured process for non-parties with an interest in the outcome of a case to request permission to file an amicus brief and to allow the presiding officer to request an amicus brief from a non-party when an issue of significance arises in the case. This ensures that relevant legal and policy perspectives from outside stakeholders are considered when appropriate while preventing excessive or unnecessary filings that could burden the adjudicative process.

This subsection is necessary to ensure that amicus participation is permitted under structured guidelines, similar to the intervention procedures detailed in Government Code section 11440.50. It balances the need for additional legal insight with the importance of maintaining efficiency in informal adjudications. This provision follows California Code of Regulations, title 1, section 1046, which governs amicus participation in formal administrative hearings. By requiring authorization from the presiding officer, this provision ensures that only relevant and useful amicus briefs are considered, preventing unnecessary complications or delays.

### **Subsection (b)**

The purpose of this subsection is to establish a structured standard for determining whether a non-party should be permitted to file an amicus brief in an informal administrative hearing. It requires that a motion to file an amicus brief demonstrate good cause, ensuring that only relevant and meaningful contributions are allowed.

This subsection is necessary to prevent excessive or unnecessary filings that could delay proceedings while still allowing the presiding officer to consider valuable legal or policy perspectives from non-parties. By requiring a showing of good cause and specifying factors for consideration, this provision ensures that amicus participation is meaningful and relevant to the case.

### **Subsections (b)(1)–(b)(4)**

The purpose of these subsections is to establish clear and structured criteria for determining whether a non-party should be permitted to file an amicus brief in an informal administrative hearing. These factors ensure that the presiding officer only allows amicus participation when it adds value to the proceedings without imposing unnecessary burdens on the parties.

This subsection is necessary to align the informal hearing process with well-established legal standards for amicus participation while maintaining efficiency and fairness in formal administrative adjudications. These factors are drawn from the California Code of Regulations, title 1, section 1046. They (1) ensure that allowing an amicus brief does not prejudice a party's right to a fair hearing or disrupt the procedural integrity of the case; (2) ensure that amicus briefs are substantive and relevant, rather than repetitive

or unnecessary; (3) allow the presiding officer to consider whether the case involves issues of broad public concern where non-party input may be valuable; and (4) ensure that the introduction of an amicus brief does not create undue financial or procedural burdens on the parties, such as requiring extensive responses.

### **Subsection (c)**

The purpose of this subsection is to establish a clear process for setting deadlines when an amicus brief is permitted in an informal administrative hearing. This ensures that all parties have a fair opportunity to respond to the amicus brief without delaying or disrupting the proceedings.

This subsection is necessary to provide procedural structure for incorporating amicus briefs into the informal hearing process. By requiring the presiding officer to set deadlines for both the amicus brief and any responses, this provision ensures that the process remains orderly, efficient, and fair. Establishing specific deadlines protects due process rights, prevents unnecessary delays, and ensures that the amicus participation does not unduly burden the parties.

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 2. DEPARTMENT OF CONSERVATION**  
**CHAPTER 5. DIVISION OF RECYCLING**  
**SUBCHAPTER 2. GENERAL REQUIREMENTS**  
**ARTICLE 4. GENERAL ACCOUNTING REQUIREMENTS**

**SECTION 2100. Penalties and Interest Charges**

**Subsection (a)**

The purpose of this amendment is to simplify and clarify the process for issuing Notices of Violation (NOVs) for civil penalties of \$5,000 or less. The amendment replaces the lengthy list of statutory and regulatory provisions with a broader reference to “violations of the Act or this chapter,” ensuring that all applicable violations are covered without requiring frequent regulatory updates. Additionally, the amendment explicitly ties the NOV process to the statutory penalty threshold in Public Resources Code section 14591.1, subdivision (a)(2), providing clarity on when this process applies. The regulation further aligns the NOV process with the citation procedures outlined in section 17063.3 of the CalRecycle Informal Hearing Rules, standardizing enforcement and improving transparency.

This amendment is necessary to improve regulatory efficiency and maintain consistency in enforcement. The previous regulation listed specific statutory sections, which required periodic revisions whenever enforcement provisions changed. By replacing these specific references with a broader scope, the regulation remains adaptable to future legislative or regulatory updates. The amendment also ensures consistency with Public Resources Code section 14591.1, subdivision (a)(2) by clearly stating that the NOV process applies only to penalties of \$5,000 or less, eliminating ambiguity and ensuring proper statutory alignment. Additionally, referencing the citation procedures in section 17063.3 provides a uniform process for issuing and contesting NOVs, making enforcement actions clearer for both CalRecycle and regulated entities.

**Subsection (a)(1)**

The purpose of this amendment is to establish a clear and enforceable timeframe for serving an NOV and to specify the recipient of the NOV. The previous regulation only required the NOV to include a brief statement of the alleged violations but did not provide guidance on when the 10-working-day period began or to whom it should be directed. By requiring that the NOV be served upon the person on whom the civil penalty is being imposed within 10 working days of the discovery of the violation by department staff, the amendment ensures that enforcement actions are carried out in a timely and consistent manner. This change improves procedural transparency and enhances due process by ensuring that respondents receive prompt notice of the alleged violation and corresponding penalty.

This amendment is necessary to ensure timely enforcement and provide respondents with adequate notice to prepare a response or challenge the violation. Establishing a 10-working-day deadline from the discovery of the violation prevents unnecessary delays and ensures uniform enforcement across cases. Additionally, the amendment clarifies that the NOV must be served on the person on whom the penalty is being imposed, ensuring that enforcement actions are directed appropriately. These changes help streamline the enforcement process, enhance fairness, and align with best practices for regulatory compliance.

### **Subsection (a)(2)**

The purpose of this amendment is to clarify the consequences of failing to request an informal hearing within the prescribed timeframe. This amendment specifically addresses informal hearings and ensures that respondents understand that their right to an informal hearing is waived if they do not submit a written request within 15 days of receiving the NOV. By clearly stating this requirement in the NOV, the amendment enhances procedural transparency and ensures respondents are aware of their obligations and rights.

This amendment is necessary to prevent ambiguity and ensure consistent enforcement of hearing rights. The prior regulation did not explicitly address informal hearings, which could lead to confusion regarding the appropriate procedures. By establishing that the 15-day period begins upon the respondent's receipt of the NOV, the amendment ensures clarity in calculating deadlines and prevents disputes over when the response period begins. Additionally, requiring the request for an informal hearing to be in writing provides an official record, preventing misunderstandings or disputes about whether a hearing was requested. These changes ensure procedural fairness, enhance efficiency in the hearing process, and provide regulated parties with clear expectations.

### **Subsection (a)(3)**

The purpose of this amendment is to remove the requirement that the inspector sign the Notice of Violation and instead require that the Notice clearly state the nature of the alleged violation.

This amendment is necessary to protect the safety and anonymity of Department inspectors, particularly those involved in undercover investigations. The prior requirement created operational and safety concerns by exposing the identities of inspectors, some of whom were publicly identified or targeted by respondents after receiving a Notice of Violation. Removing the signature requirement allows the Department to shield the identities of field inspectors until disclosure of witnesses for the hearing.

At the same time, requiring the Notice to clearly state the nature of the violation ensures that the respondent receives adequate information to prepare a defense, preserving procedural fairness and compliance with due process. This balance supports both the



integrity of enforcement operations and the respondent's right to notice and a meaningful opportunity to be heard.

### **Subsection (b)**

The purpose of this amendment is to establish a clear and consistent timeframe for when interest begins accruing on unpaid civil penalties and to define the applicable interest rate. Deleting former subsection (b) eliminates outdated and inconsistent references to formal hearing procedures under Chapter 5 of the APA (Gov. Code, § 11500 et seq.). The deleted language incorrectly suggests that all civil penalties under these provisions must be adjudicated under formal APA procedures, even when not required by statute. Its removal ensures consistency with the Department's centralized informal hearing framework and eliminates conflicting procedural requirements.

The added language in the amendment clarifies that interest will begin accruing 30 days after the date the civil penalty was assessed and served, ensuring that respondents have a reasonable window to make payment before additional financial consequences apply. Additionally, the amendment provides that interest shall be calculated at the rate earned on the Pooled Money Investment Account (PMIA) to ensure an objective and standardized methodology for determining interest charges.

This amendment is necessary to eliminate ambiguity regarding when interest begins accruing on unpaid civil penalties and to align the interest calculation with an established financial benchmark. The prior language did not specify when a payment was officially "due," which could lead to disputes about when interest should begin accumulating. By explicitly stating that interest begins accruing 30 days after assessment and service, the amendment ensures fairness and consistency in enforcement. Furthermore, referencing the PMIA rate prevents arbitrary interest calculations and aligns with recognized state financial practices. These changes provide regulated entities with clear expectations, promote timely compliance, and ensure that interest charges are applied in a predictable and legally defensible manner.

### **Subsection (c)**

The purpose of deleting former subsection (c) is to eliminate vague and incomplete language about interest accrual. The previous regulation stated only that "interest shall accrue from the date the payment was due," without specifying when a penalty became due or how the interest rate should be calculated. This lack of specificity created uncertainty for all parties. A new provision has been added in subsection (b) to clarify that interest begins accruing 30 days after the civil penalty is assessed and served and is calculated at the rate earned by the Pooled Money Investment Account (PMIA).

The deletion of subsection (c) is thus necessary to replace vague language with a more specific, fair, and enforceable standard for assessing interest on unpaid penalties. Deleting subsection (c) is necessary to prevent conflict with the new subsection (b).

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 2. DEPARTMENT OF CONSERVATION**  
**CHAPTER 5. DIVISION OF RECYCLING**  
**SUBCHAPTER 2. GENERAL REQUIREMENTS**  
**ARTICLE 5. ADMINISTRATIVE ACTIONS**

**SECTION 2130. Hearings**

**Subsection (a)**

The purpose of this amendment is to update terminology to reflect the current organizational structure and ensure clarity in identifying the appropriate recipient of adjudication notices. The previous regulation referred to “the operator of record,” which was a narrower designation that did not necessarily encompass all entities or individuals subject to adjudication proceedings. The amendment replaces this phrase with “the person against which adjudication proceedings will be brought” to ensure that the notice is directed to the appropriate party in all enforcement actions. Additionally, the amendment updates the reference from “Division” to “Department” to reflect the fact that the Division of Recycling is now part of CalRecycle. These changes modernize the regulation and improve its accuracy.

This amendment is necessary to eliminate outdated references and ensure procedural clarity in adjudication proceedings. The term “operator of record” could create confusion regarding who should receive notice of adjudication proceedings. By specifying “the person against which adjudication proceedings will be brought,” the regulation ensures that all affected individuals or entities receive proper notification, improving procedural fairness. Furthermore, updating “Division” to “Department” ensures that the regulation accurately reflects CalRecycle’s current structure and authority. These revisions enhance regulatory consistency and administrative efficiency.

**Subsection (a)(1)**

The purpose of this amendment is to clarify the legal authority for certificate revocation by referencing the specific statutory provision that governs this action. The previous regulation broadly listed “revocation of a certificate” without citing the applicable statute, which could lead to ambiguity regarding the legal basis for revocation. By explicitly citing Public Resources Code section 14591.2, subdivision (c)(1), the amendment ensures that certificate holders and stakeholders can easily identify the statutory authority under which revocations are pursued. This change improves transparency, consistency, and legal clarity in enforcement actions.

This amendment is necessary to provide clear statutory authority for enforcement actions related to certificate revocations. Without a direct reference to Public Resources Code section 14591.2, subdivision (c)(1), certificate holders may lack clarity on the legal grounds for revocation, which could lead to procedural misunderstandings or challenges to enforcement actions. By explicitly citing the relevant statutory provision, the

amendment aligns the regulation with legislative authority, facilitates consistent enforcement practices, and ensures that stakeholders are fully informed of their rights and obligations.

#### **Subsection (a)(2)**

The purpose of this amendment is to clarify the statutory basis for the suspension of a certificate by explicitly referencing Public Resources Code section 14591.2, subdivision (c)(2). The previous regulation generally listed “suspension of a certificate” without citing the specific legal authority governing such actions. By incorporating the statutory reference, the amendment ensures that regulated entities and stakeholders can easily identify the legal grounds under which a suspension may be imposed. This change enhances transparency, consistency, and legal clarity in enforcement proceedings.

This amendment is necessary to ensure that certificate holders have a clear understanding of the statutory basis for suspension actions. Without a direct reference to Public Resources Code section 14591.2, subdivision (c)(2), affected parties may face uncertainty regarding the legal justification for suspension, potentially leading to disputes or procedural inefficiencies. By explicitly citing the relevant statutory provision, the amendment aligns the regulation with legislative authority, facilitates consistent enforcement practices, and ensures that stakeholders are fully informed of their rights and obligations.

#### **Subsection (a)(4)**

The purpose of this amendment is to clarify the threshold and statutory basis for imposing civil penalties on certificate holders in adjudication proceedings. The previous regulation broadly referenced the imposition of civil penalties without specifying a monetary threshold or the applicable statute. The amendment explicitly states that civil penalties exceeding \$5,000 are subject to formal adjudication proceedings under Public Resources Code section 14591.1, subdivision (a)(1). This distinction is necessary to differentiate between higher-value penalties, which use a formal administrative hearing process, and penalties of \$5,000 or less, which are handled through informal hearing procedures.

This amendment is necessary to eliminate ambiguity regarding when a formal adjudication process is required for civil penalties. Without a clear monetary threshold, it was unclear whether all penalties, regardless of amount, utilize a formal hearing. By specifying that only penalties exceeding \$5,000 must utilize a formal hearing, this amendment adds necessary clarity while allowing lower-value penalties to utilize a more efficient informal hearing process.

#### **Subsection (a)(5)**

The purpose of this amendment is to establish that restitution orders are subject to formal adjudication proceedings. The previous regulation did not specify restitution as an enforcement action requiring formal adjudication. This amendment clarifies that

restitution under Public Resources Code section 14591.4(c)(1) must follow the formal hearing process. This change ensures that restitution claims are handled through formal procedures while allowing smaller claims to be resolved through alternative means.

This amendment is necessary to differentiate between restitution amounts that require formal adjudication and those that may be handled through an informal process. Without a specified threshold, all restitution claims, regardless of amount, could be subject to formal proceedings, incurring an administrative cost higher than the restitution amount. Thus, the regulation aligns with Public Resources Code section 14591.4, subdivision (c)(1) and ensures that only higher-value restitution claims require a formal hearing.

### **Subsection (b)**

The purpose of this amendment is to retain the requirement that hearings specified in subsection (a) be conducted under Chapter 5 of the APA while making minor clarifying edits. The previous version contained redundant phrasing, such as “Hearings concerning proceedings in (a) above,” which has been streamlined to “Hearings specified in subdivision (a) above” for improved clarity and readability.

This amendment is necessary to improve regulatory clarity and remove unnecessary wording without altering substantive requirements. The original phrasing could lead to grammatical redundancy, and refining the language enhances conciseness and readability. The amendment does not change the procedural framework for hearings, which remain governed by Chapter 5 of the APA, ensuring that due process, fairness, and procedural consistency are maintained in all formal adjudicative proceedings.

### **Subsection (c)**

The purpose of this amendment is to clarify the process for requesting an informal hearing and to ensure that such hearings are conducted in accordance with the CalRecycle Informal Hearing Rules rather than under Chapter 5 of the APA. The previous regulation did not distinguish between formal and informal hearings, which could lead to confusion regarding which adjudicative framework applies. This amendment explicitly states that only certain proceedings (those not governed by subdivision (a)) are eligible for informal adjudication and provides a clear reference to the applicable procedural rules.

This amendment is necessary to remove ambiguity and ensure procedural consistency by distinguishing between matters subject to formal hearings under Chapter 5 of the APA and those that may be resolved through CalRecycle’s informal adjudicative process. The prior regulation did not specify how informal hearings should be handled, potentially leading to confusion and inconsistent application of hearing rights. By referencing the CalRecycle Informal Hearing Rules, this amendment ensures that regulated entities understand their right to request an informal hearing and the

procedures governing such requests, improving due process protections, regulatory clarity, and administrative efficiency.

### **Subsection (c)(1)**

The purpose of this amendment is to clarify that the denial of an original application for a certificate or registration under Public Resources Code section 14541, subdivision (b) is subject to an informal hearing process. The prior regulation did not explicitly state which types of adjudicative matters qualified for informal hearings, creating potential confusion regarding which procedural framework applies. By listing denial of an original certificate or registration application as a matter eligible for informal adjudication, this amendment ensures clarity and consistency in how these cases are handled.

This amendment is necessary to remove ambiguity regarding the appeal process for original application denials and to ensure that affected applicants understand their right to an informal hearing rather than being subject to the formal hearing requirements of Chapter 5 of the APA. Public Resources Code section 14541, subdivision (b) governs the issuance of certificates and registrations, and applicants who receive a denial must have a clear and structured process to contest that decision. By explicitly referencing section 14541, subdivision (b) of the Public Resources Code, this amendment improves regulatory transparency, procedural fairness, and administrative efficiency.

### **Subsection (c)(2)**

The purpose of this amendment is to clarify that the revocation of a probationary certification or registration under Public Resources Code section 14541, subdivision (b) is subject to an informal hearing process. The prior regulation did not differentiate between the revocation of a standard certification (which follows formal adjudication under Chapter 5 of the APA) and the revocation of a probationary certification or registration, creating potential confusion regarding the appropriate hearing process. By explicitly listing probationary certification or registration revocations under the informal hearing process, this amendment ensures clarity and consistency in how these cases are adjudicated.

This amendment is necessary to eliminate ambiguity and provide clear procedural guidance for individuals or entities whose probationary certifications or registrations are revoked. Public Resources Code section 14541, subdivision (b) governs the issuance of probationary certifications and registrations, and if CalRecycle determines that revocation is necessary, affected parties must have a structured process to contest that decision. By specifying that these revocations are handled through informal hearings, rather than formal APA proceedings, the amendment improves regulatory clarity, procedural efficiency, and due process protections, ensuring that affected entities understand their rights and obligations.

### **Subsection (c)(3)**

The purpose of repealing the former subsection (c)(3) is to ensure consistency with the CalRecycle Informal Hearing Rules. The purpose of the added language in this amendment is to clarify that restitution orders issued under Public Resources Code section 14591.4, subdivision (c)(2) are subject to an informal hearing process. The prior regulation did not specify whether restitution determinations should follow informal or formal adjudicative procedures, potentially leading to confusion regarding procedural rights and obligations. By explicitly including restitution under section 14591.4, subdivision (c)(2) as a matter eligible for informal hearings, this amendment ensures that affected parties understand their hearing rights and the procedural framework governing restitution determinations.

It is necessary to repeal the former subsection (c)(3) because these provisions are being superseded by proposed regulation section 17063.27. This amendment is necessary to eliminate ambiguity and ensure consistency in restitution adjudications. Public Resources Code section 14591.4, subdivision (c)(2) authorizes CalRecycle to use an informal hearing to order restitution orders under a set dollar amount. Without specifying that these restitution matters follow informal hearing procedures, there could be uncertainty about whether such cases require formal APA adjudication. By directing these matters to the informal hearing process, the amendment improves regulatory transparency, administrative efficiency, and due process protections, ensuring that low-value restitution cases are resolved fairly and consistently within CalRecycle's established adjudicative framework.

#### **Subsection (c)(4)**

The purpose of repealing the former subsection (c)(4) is to ensure consistency with the CalRecycle Informal Hearing Rules. The purpose of the added language in this amendment is to clarify that civil penalties of \$5,000 or less, imposed under Public Resources Code section 14591.1, subdivision (a)(2), are subject to an informal hearing process. The prior regulation did not distinguish between high-value and low-value civil penalties, which could lead to confusion about whether all penalty cases require formal adjudication under the APA. By explicitly stating that penalties of \$5,000 or less follow the informal hearing process, this amendment ensures that lower-value enforcement actions are resolved efficiently while still maintaining due process protections.

It is necessary to repeal the former subsection (c)(4) because these provisions are being superseded by proposed regulation section 17063.27. This amendment is necessary to remove ambiguity regarding the procedural framework for contesting civil penalties and to ensure that low-value penalties are adjudicated through a streamlined and accessible informal hearing process. Public Resources Code section 14591.1, subdivision (a)(2) establishes \$5,000 as the threshold for informal penalty adjudication, meaning that only penalties exceeding this amount require a formal hearing under Chapter 5 of the APA. By specifying that penalties of \$5,000 or less are resolved through informal hearings, the amendment improves regulatory clarity, administrative efficiency, and accessibility.

**Subsection (c)(5)**

The purpose of this amendment is to clarify that any other matters under the Act that provide for notice under Article 10 (commencing with Government Code section 11445.10) of Chapter 4.5 of the Administrative Procedure Act (APA) are subject to an informal hearing process. The previous regulation did not explicitly state how other provisions within the Act that require notice under Article 10 should be handled, which could create uncertainty about whether these matters require a formal or informal hearing. By specifying that such cases are eligible for an informal hearing, this amendment ensures that all adjudicative matters falling under Article 10 of Chapter 4.5 are resolved in a consistent and procedurally appropriate manner.

This amendment is necessary to eliminate ambiguity regarding which adjudicative matters are subject to informal hearings and to ensure that all cases meeting the criteria under Article 10 of Chapter 4.5 follow a uniform process. Without this clarification, there could be uncertainty as to whether these matters should be handled through the informal process or escalated to a formal APA hearing under Chapter 5. By explicitly referencing Article 10 (commencing with Government Code section 11445.10), the amendment ensures that regulated entities, hearing officers, and stakeholders clearly understand the procedural framework governing these matters.

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 2. DEPARTMENT OF CONSERVATION**  
**CHAPTER 5. DIVISION OF RECYCLING**  
**SUBCHAPTER 4.5. DEALERS AND DEALER COOPERATIVES**  
**ARTICLE 5. ENFORCEMENT**

**SECTION 2385. Stewardship Plan Revocation; Enforcement Mechanisms**

**Subsection (d)**

The purpose of the amendment is to change the deadline to request a hearing from 30 to 15 days to align with the standard timeframe for hearing requests under CalRecycle's informal hearing regulations. This change is necessary to promote consistency across the Department's programs.

Additionally, the purpose of the additional amendment is to clarify that the requirement to submit hearing requests electronically by email constitutes an express exception to 14 CCR § 17063.4, which otherwise permits mailing and other methods. This is necessary to avoid confusion about which procedures apply and reinforces that, for dealer cooperatives, email-only submission is mandated by regulation per the program's preference. Identifying this as an express exception ensures the regulation is enforceable despite broader default rules.

**Subsection (e)**

The purpose of this amendment is to remove outdated references to APA's informal hearing provisions (i.e., Government Code § 11445.10 and Chapter 4.5 of Part 1 of Division 3 of Title 2) and instead directs parties to CalRecycle's own hearing regulations.

This is necessary to reflect the Department's adoption of a comprehensive informal hearing framework and to eliminate conflicting references to procedures no longer applicable.

**Subsection (f)**

The purpose of this amendment is to remove the subsection that is unnecessary after adoption of CalRecycle's uniform informal hearing regulations, which already specify the timeline for issuing a written decision. The strikethrough text may conflict with centralized provisions and is no longer needed.

Removing this duplicative language is necessary to prevent confusion and ensure that all informal hearing timelines are governed by a single, centralized standard.



**TITLE 14. NATURAL RESOURCES  
DIVISION 2. DEPARTMENT OF CONSERVATION  
CHAPTER 5. DIVISION OF RECYCLING  
SUBCHAPTER 4.5. DEALERS AND DEALER COOPERATIVES  
ARTICLE 5. ENFORCEMENT**

**SECTION 2386. Penalties and Interest Charges**

**Subsection (a)(2)**

The purpose of this amendment is to update the reference from the outdated Article 10 provisions, incorporating informal hearing provisions of Government Code section 11445.10, to CalRecycle's informal hearing regulations at 14 CCR §§ 17063.1–17063.32.

This change is necessary to align the referenced hearing process with CalRecycle's informal hearing regulations. The previous citation to the APA's informal hearing provisions is no longer applicable due to the Department's adoption of a centralized hearing framework. Updating this citation eliminates confusion and ensures parties are directed to the correct, operative procedures.

**Subsection (a)(3)**

The purpose of this amendment is to change the deadline to request a hearing from 30 to 15 days, the timeline for requesting a hearing in the CalRecycle informal hearing regulations.

The revision is necessary to align the timeline for requesting a hearing with the 15-day filing deadline established in CalRecycle's informal hearing regulations. It also follows the standard deadline to request a hearing in formal administrative hearings governed by the APA (Gov. Code, § 11506, subd. (a)). This consistency is necessary to streamline Departmental procedures and prevent procedural errors.

**Subsection (a)(4)**

The purpose of this amendment is to remove the requirement that the inspector sign the Notice of Violation and instead require that the Notice clearly state the nature of the alleged violation.

This amendment is necessary to protect the safety and anonymity of Department inspectors, particularly those involved in undercover investigations. The prior requirement created operational and safety concerns by exposing the identities of inspectors, some of whom were publicly identified or targeted by respondents after receiving a Notice of Violation. Removing the signature requirement allows the Department to shield the identities of field inspectors witness disclosure before the hearing.

At the same time, requiring the Notice to clearly state the nature of the violation ensures that the respondent receives adequate information to prepare a defense, preserving procedural fairness and compliance with due process. This balance supports both the integrity of enforcement operations and the respondent's right to notice and a meaningful opportunity to be heard.

**TITLE 14. NATURAL RESOURCES  
DIVISION 2. DEPARTMENT OF CONSERVATION  
CHAPTER 5. DIVISION OF RECYCLING  
SUBCHAPTER 6. RECYCLING CENTERS  
ARTICLE 1. REQUIREMENTS FOR RECYCLING CENTERS**

**SECTION 2500.5. Operation Standards for Mobile Units and Anchor Recycling Centers**

**Subsection (k)(2)**

The purpose of this amendment is to align the appeal process for approval rescission for mobile units or anchor recycling centers with the CalRecycle Informal Hearing Rules. The previous regulation provided that appeals would be accepted within 20 days of notice regarding the intent to rescind approval. The prior regulation also provided that Article 10 of the APA applied rather than the structured, department-wide adjudicative framework established in the CalRecycle Informal Hearing Rules.

This amendment is necessary to eliminate outdated regulatory language and procedural requirements, ensuring that appeals within CalRecycle follow a single, consistent process. The prior version predated the CalRecycle Informal Hearing Rules and contained a separate appeal process that could lead to confusion and inconsistencies in informal adjudications.

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**  
**CHAPTER 4. RESOURCE CONSERVATION PROGRAMS**  
**ARTICLE 4. RECYCLED CONTENT NEWSPRINT**

**SECTION 17974. Penalties**

**Subsection (d)**

The purpose of this amendment is to align the appeal process for penalties with the CalRecycle Informal Hearing Rules. The previous regulation required appeals to be made in writing to the Executive Director of the Board, who would then schedule a hearing before the full Board within 30 days. This amendment removes the outdated process and ensures that all penalty appeals follow the structured, department-wide adjudicative framework established in the CalRecycle Informal Hearing Rules.

This amendment is necessary to eliminate outdated regulatory language and procedural requirements, ensuring that appeals of civil penalties for noncompliance with newsprint certification requirements follow a single, consistent process. The prior version predated the CalRecycle Informal Hearing Rules and contained a separate appeal process that could lead to confusion and inconsistencies in penalty adjudication.

**TITLE 14. NATURAL RESOURCES**

**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

**CHAPTER 6. PERMITTING OF WASTE TIRE FACILITIES AND WASTE TIRE  
HAULER REGISTRATION**

**ARTICLE 8.5. WASTE TIRE HAULER REGISTRATION AND MANIFESTING  
REQUIREMENTS FOR WASTE AND USED TIRE HAULERS, RETREADERS, WASTE  
AND USED TIRE GENERATORS, AND WASTE AND USED TIRE END-USE  
FACILITIES**

**SECTION 18458. Request for Hearing of Denial, Suspension, or Revocation of  
Waste Tire Hauler Registration**

**Subsection (a)**

The purpose of this amendment is to align the appeal process for waste tire hauler registration denials, suspensions, and revocations with the CalRecycle Informal Hearing Rules. The previous regulation required appeals to follow Government Code Sections 11505 to 11519, which apply to formal adjudicative proceedings under the APA. However, these APA provisions are not applicable to CalRecycle's informal hearing process. This amendment ensures that all appeals related to waste tire hauler registrations follow a standardized, department-specific informal adjudicative process established in the CalRecycle Informal Hearing Rules.

This amendment is necessary to eliminate outdated procedural references and ensure consistency in CalRecycle's hearing procedures. The prior version of subsection (a) predated the establishment of the CalRecycle Informal Hearing Rules. By directing all appeals to follow CalRecycle's informal hearing regulations, the amendment ensures that all waste tire hauler registration decisions are subject to the same structured adjudicative framework as other Department enforcement actions.

## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

#### **CHAPTER 6. PERMITTING OF WASTE TIRE FACILITIES AND WASTE TIRE HAULER REGISTRATION**

#### **ARTICLE 8.5. WASTE TIRE HAULER REGISTRATION AND MANIFESTING REQUIREMENTS FOR WASTE AND USED TIRE HAULERS, RETREADERS, WASTE AND USED TIRE GENERATORS, AND WASTE AND USED TIRE END-USE FACILITIES**

#### **SECTION 18464. Amount of Civil Penalties and Administrative Penalty Schedule**

##### **Subsection (b)**

The purpose of this amendment is to align the procedures for administrative hearings conducted under Public Resources Code sections 42960 and 42962 with the CalRecycle Informal Hearing Rules while preserving specific statutory requirements related to hearing scheduling and waiver provisions. The previous regulation primarily addressed the waiver of a hearing right but did not clearly define the procedural framework for how these hearings should be conducted. This amendment clarifies that such hearings shall follow CalRecycle's hearing regulations while ensuring that statutory timelines for scheduling and holding hearings are maintained. Additionally, the amendment incorporates Public Resources Code section 42961.1, which allows CalRecycle to file or convert a matter to a formal hearing under Chapter 5 of the APA when appropriate.

This amendment is necessary to remove ambiguity regarding the procedural framework for hearings under Public Resources Code sections 42960 and 42962 and to ensure that all informal administrative hearings follow a structured, department-specific process while complying with statutory requirements. The prior version focused only on the waiver of a hearing right but did not fully address how these hearings should be scheduled and conducted, potentially creating uncertainty for regulated entities and hearing officers. By explicitly referencing CalRecycle's hearing regulations, the amendment provides clarity and consistency across all adjudicative matters while ensuring that hearings follow statutorily required scheduling deadlines. Additionally, incorporating Public Resources Code section 42961.1 ensures that complex or high-stakes cases may be handled as formal hearings under Chapter 5 of the APA when necessary.

## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

#### **CHAPTER 6. PERMITTING OF WASTE TIRE FACILITIES AND WASTE TIRE HAULER REGISTRATION**

#### **ARTICLE 8.5. WASTE TIRE HAULER REGISTRATION AND MANIFESTING REQUIREMENTS FOR WASTE AND USED TIRE HAULERS, RETREADERS, WASTE AND USED TIRE GENERATORS, AND WASTE AND USED TIRE END-USE FACILITIES**

#### **SECTION 18466. Procedure for Imposing Civil Penalties**

##### **Subsection (a)**

The purpose of this amendment is to align the process for imposing administrative civil penalties with the CalRecycle Informal Hearing Rules while also preserving the option for matters to be handled as formal hearings under the APA when necessary. The previous regulation required all civil penalties to follow Chapter 5 of the APA, which governs formal adjudicative proceedings. However, many of CalRecycle's civil penalty matters are more appropriately handled through informal adjudicative procedures. By directing civil penalties to follow CalRecycle's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32) unless utilizing a formal APA hearing, this amendment ensures procedural consistency, efficiency, and clarity in how penalty matters are adjudicated.

This amendment is necessary to eliminate the outdated blanket requirement that all civil penalty proceedings follow the formal APA process, which is often unnecessary and inefficient for administrative enforcement matters. The CalRecycle Informal Hearing Rules provide a structured, department-specific informal hearing process that is more appropriate for many cases. However, the amendment also preserves flexibility by allowing matters to be filed as or converted to a formal hearing under Chapter 5 of the APA when warranted. This ensures that higher-stakes or more complex cases can still receive full formal adjudication while allowing routine administrative penalty matters to follow a streamlined and efficient informal hearing process.

##### **Subsection (b)**

The purpose of this amendment is to remove unnecessary language from the original subsection (b) and to clarify that the trier of fact has the discretion to impose civil penalties in either an administrative hearing or a civil proceeding, as authorized under Public Resources Code section 42962. The previous version did not clearly specify the distinct venues in which penalties may be imposed, which could create confusion regarding who has the authority to impose penalties and in what context. This amendment ensures that the regulation accurately reflects the statutory framework and distinguishes between administrative and civil enforcement processes.

This amendment is necessary to eliminate redundancy and to clarify the decision-making authority of the trier of fact in different enforcement settings. The original subsection (b) contained language that is unnecessary upon enactment of the CalRecycle Informal Hearing Rules. Additionally, by explicitly stating that civil penalties may be imposed at the discretion of the trier of fact in an administrative hearing or a civil proceeding, the amendment ensures that regulated entities, enforcement personnel, and legal stakeholders clearly understand that civil penalties may be sought through an administrative hearing, as well as in superior court. These changes enhance regulatory clarity, procedural efficiency, and alignment with statutory authority.



**TITLE 14. NATURAL RESOURCES**

**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

**CHAPTER 8. USED OIL RECYCLING PROGRAM**

**ARTICLE 5. USED OIL RECYCLING FACILITIES**

**SECTION 18643.0. Registration and Certification of Used Oil Recycling Facilities and Rerefining Facilities**

**Subsection (e)**

The purpose of this amendment is to align the appeal process for registration or certification denials with the CalRecycle Informal Hearing Rules. The previous regulation established a separate appeal process, including a 30-day deadline, specific appeal content requirements, and a 20-day decision timeline, which are now fully addressed in CalRecycle's standardized adjudicative framework. By directing appeals to follow the CalRecycle Informal Hearing Rules, this amendment ensures procedural consistency, clarity, and efficiency across all appeals related to registration or certification decisions.

This amendment is necessary to eliminate duplicative appeal procedures and ensure that all adjudicative matters follow a single, uniform regulatory framework. The prior version of subsection (e) predated the adoption of the CalRecycle Informal Hearing Rules. Maintaining a standalone appeal process for registration or certification denials could create procedural conflicts or cause confusion regarding which rules apply. By referencing CalRecycle's hearing regulations, the amendment ensures that all appeals are handled consistently using the same procedural protections and timelines as other Department enforcement matters.

**TITLE 14. NATURAL RESOURCES**  
**DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**  
**CHAPTER 11. PRODUCT STEWARDSHIP**  
**ARTICLE 3. USED MATTRESS RECOVERY AND RECYCLING PROGRAM**

**SECTION 18971. Procedure for Imposing Civil Penalties**

**Subsection (a)**

The purpose of this amendment is to align the process for imposing civil penalties with the CalRecycle Informal Hearing Rules. The previous regulation required civil penalties to be imposed under Article 10 of Chapter 4.5 of the APA, which provides general adjudicative procedures that are not tailored to CalRecycle's specific enforcement processes. By replacing this reference with CalRecycle's own hearing regulations, the amendment ensures that administrative civil penalties follow a clear, structured, and internally consistent framework designed specifically for CalRecycle's informal hearings.

This amendment is necessary to eliminate reliance on procedures that do not fully align with CalRecycle's enforcement framework. The prior version predated the adoption of the CalRecycle Informal Hearing Rules. By directing all civil penalty actions to follow CalRecycle's hearing regulations, the amendment removes ambiguity, ensures consistency across enforcement proceedings, and improves due process protections for regulated entities.

**Subsections (b)–(c)**

The purpose of deleting the original subsection (b) is to remove unnecessary procedural language. The previous regulation listed specific service methods, including personal service, substitute service, certified mail, and electronic service, but these procedures are now standardized in the CalRecycle Informal Hearing Rules. By eliminating this subsection, the amendment ensures that all service-related requirements align with CalRecycle's comprehensive adjudicative framework rather than maintaining a separate and potentially conflicting set of rules. Additionally, renumbering the original subsection (c) to (b) ensures that the regulatory text remains logically structured and cohesive following the removal of the previous subsection.

This deletion is necessary to eliminate redundancy and prevent inconsistencies between this regulation and the CalRecycle Informal Hearing Rules. The prior provision predated the adoption of CalRecycle's informal hearing procedures, and maintaining a separate service provision within this section could create confusion or conflicting procedural requirements. By removing outdated language and renumbering the remaining subsections accordingly, the amendment ensures that all civil penalty enforcement procedures are governed by a single, uniform set of rules.

## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

#### **CHAPTER 11. PRODUCT STEWARDSHIP**

#### **ARTICLE 4. PHARMACEUTICAL AND SHARPS WASTE STEWARDSHIP PROGRAM**

#### **SECTION 18975.1. Procedure for Imposing Administrative Civil Penalties**

##### **Subsection (b)**

The purpose of this amendment is to standardize the process for initiating administrative civil penalty actions with the CalRecycle Informal Hearing Rules. The amendment replaces the term “accusation” with “statement of charges” to reflect the procedural framework established in the CalRecycle Informal Hearing Rules, ensuring clarity and consistency in enforcement actions. Additionally, the amendment retains the requirement that the statement of charges include an explanation of how CalRecycle applied the penalty criteria outlined in Section 18975(c), ensuring transparency in penalty assessments.

This amendment is necessary to ensure procedural consistency across CalRecycle’s enforcement framework. The previous regulation predated the adoption of the CalRecycle Informal Hearing Rules and maintained a separate procedural process that could cause confusion or inconsistencies in enforcement actions. The amendment ensures that administrative civil penalties are processed under a single, uniform set of rules and explicitly references section 17063.3 of the CalRecycle Informal Hearing Rules to prevent procedural discrepancies. This ensures that regulated entities receive notice in a clear, standardized manner.

##### **Subsection (c)**

The purpose of this amendment is to align hearing procedures for administrative civil penalty actions with the CalRecycle Informal Hearing Rules by referencing Title 14, California Code of Regulations, Sections 17063.1–17063.32. The previous regulation listed specific service methods for delivering an accusation, but service methods are now fully covered in the CalRecycle Informal Hearing Rules. This amendment eliminates the unnecessary duplication of procedural details and ensures that all hearings conducted under this article follow a standardized, well-defined process.

This amendment is necessary to remove outdated procedural requirements and ensure that all hearings are conducted under one cohesive regulatory framework. The prior regulation predated the establishment of the CalRecycle Informal Hearing Rules, which now comprehensively address service. Maintaining separate, standalone hearing requirements within this section could lead to conflicting procedural rules and unnecessary complexity in enforcement actions. By directing all hearings to follow CalRecycle’s existing hearing regulations, the amendment promotes clarity, consistency, and procedural efficiency, ensuring that respondents and stakeholders are subject to a single, uniform set of rules when contesting administrative penalties.

### **Subsections (d)–(f)**

The purpose of deleting subsections (d) through (f) is to remove unnecessary procedural language that is now fully addressed under the CalRecycle Informal Hearing Rules. The prior provisions outlined hearing request deadlines, hearing procedures, and decision issuance timelines, all of which are now governed by CalRecycle’s standardized hearing framework. By removing these subsections, this amendment ensures that all procedural requirements for administrative civil penalty actions follow a single, consistent regulatory structure, eliminating the risk of redundant or conflicting rules.

This deletion is necessary to streamline and consolidate CalRecycle’s hearing procedures under the CalRecycle Informal Hearing Rules. The previous version of subsections (d)–(f) predated the adoption of these regulations, and retaining a separate set of procedural requirements could create redundancy or inconsistency. By removing these provisions, the amendment ensures that all enforcement and adjudication processes follow the same established framework. This change helps regulated entities, hearing officers, and stakeholders by providing a single reference point for hearing procedures, reducing confusion, and ensuring due process protections remain clear and consistent.

## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

#### **CHAPTER 11. PRODUCT STEWARDSHIP**

#### **ARTICLE 4. PHARMACEUTICAL AND SHARPS WASTE STEWARDSHIP PROGRAM**

#### **SECTION 18975.2. Procedure for Stewardship Plan Revocation, Resubmittal, or Additional Compliance Reporting**

##### **Subsection (c)**

The purpose of this amendment is to standardize and streamline the requirements for serving notices related to stewardship plan revocation, resubmittal, or additional compliance reporting. The previous regulation listed multiple service methods (personal service, substitute service, certified mail, or electronic service), which are now covered under the CalRecycle Informal Hearing Rules. By replacing this detailed list with a reference to the CalRecycle Informal Hearing Rules, the amendment ensures that notice requirements are consistent across all adjudicative proceedings under CalRecycle's enforcement framework.

This amendment is necessary to eliminate redundancy and prevent potential conflicts between this regulation and the newly established CalRecycle Informal Hearing Rules. The previous version contained specific service provisions that could become outdated or inconsistent with CalRecycle's overall enforcement framework. By referencing section 17063.3 of the CalRecycle Informal Hearing Rules, the amendment ensures that all enforcement notices follow a single, uniform set of procedural requirements, reducing confusion and ensuring compliance with established due process protections.

##### **Subsection (d)**

The purpose of this amendment is to align the process for requesting a hearing with the CalRecycle Informal Hearing Rules by referencing the regulation for Notices of Defense. The previous regulation contained a standalone process for submitting hearing requests, including a 30-day deadline and specific content requirements. Instead of maintaining separate and inconsistent procedures, this amendment ensures that hearing requests follow the standardized framework established in the CalRecycle Informal Hearing Rules. The amendment also retains the consequence of failing to request a hearing, confirming that respondents who do not submit a timely request waive their right to a hearing and remain subject to CalRecycle's enforcement actions.

This amendment is necessary to remove redundancy and ensure uniformity in CalRecycle's hearing procedures. The previous regulation predated the establishment of the CalRecycle Informal Hearing Rules, and maintaining a separate hearing request process could lead to conflicting procedural requirements. By referencing section 17063.4 of the CalRecycle Informal Hearing Rules, this amendment ensures that respondents follow a single, consistent process for contesting enforcement actions, improving clarity, due process protections, and administrative efficiency. Additionally,

retaining the waiver provision ensures that respondents clearly understand the consequences of failing to act within the prescribed timeframe, promoting fair and effective enforcement.

#### **Subsection (e)**

The purpose of this amendment is to align the hearing procedures for stewardship plan enforcement actions with the CalRecycle Informal Hearing Rules by referencing Title 14, California Code of Regulations, Sections 17063.1–17063.32. The previous regulation required hearings to be held before the Director of CalRecycle of Resources Recycling and Recovery, without specifying procedural guidelines beyond general evidentiary standards. This amendment ensures that hearings are conducted under CalRecycle’s informal hearing procedures, thereby promoting consistency, transparency, and procedural efficiency across all adjudicative matters.

This amendment is necessary to eliminate ambiguity and ensure uniformity in how hearings are conducted within CalRecycle. The previous regulation predated the establishment of the CalRecycle Informal Hearing Rules, and maintaining separate, standalone hearing requirements could lead to confusion or procedural inconsistencies. This amendment ensures that all enforcement hearings follow a single, established set of rules, improving due process protections, regulatory clarity, and administrative efficiency.

#### **Subsection (f)**

The purpose of deleting subsection (f) is to eliminate redundancy between this regulation and the CalRecycle Informal Hearing Rules. The previous regulation required the Director of CalRecycle of Resources Recycling and Recovery to issue a written decision within 60 days of the conclusion of the hearing. However, the timeline for issuing decisions is now fully governed by the CalRecycle Informal Hearing Rules, making this provision unnecessary. Removing this subsection ensures that all decision timelines follow a single, consistent set of rules under CalRecycle’s hearing framework.

This deletion is necessary to ensure consistency across all adjudicative matters handled by CalRecycle. The previous version of subsection (f) predated the adoption of the CalRecycle Informal Hearing Rules, and keeping a separate decision timeline within this regulation could create confusion. By removing this provision, the amendment ensures that decision issuance deadlines remain uniform, legally sound, and procedurally efficient.

## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

#### **CHAPTER 12. SHORT-LIVED CLIMATE POLLUTANTS**

#### **ARTICLE 16. ADMINISTRATIVE CIVIL PENALTIES**

##### **SECTION 18997.5. Department Procedure for Imposing Administrative Civil Penalties**

###### **Subsection (a)**

The purpose of this amendment is to update and standardize the process for initiating administrative civil penalty actions by aligning it with the CalRecycle Informal Hearing Rules. The prior regulation referred to an “accusation” and the amendment replaces this term with “statement of charges” to ensure consistency with CalRecycle’s informal adjudication procedures. Additionally, by referencing the CalRecycle Informal Hearing Rules, the amendment provides a clear procedural framework that aligns with CalRecycle’s structured pleading process.

This amendment is necessary to ensure that administrative civil penalty proceedings follow the CalRecycle Informal Hearing Rules rather than relying on other procedures. By replacing “accusation” with “statement of charges”, the amendment ensures that regulated entities clearly understand the nature of the enforcement action and which party will bear the burden of proof at the informal hearing. Additionally, referencing section 17063.3 of the CalRecycle Informal Hearing Rules provides consistency in procedural requirements, preventing discrepancies between different regulatory frameworks.

###### **Subsections (b)–(g)**

The purpose of deleting subsections (b) through (g) is to eliminate redundancy and prevent conflicts between this regulation and the CalRecycle Informal Hearing Rules. The prior provisions outlined service methods, hearing request deadlines, scheduling procedures, hearing timelines, waiver consequences, and decision issuance deadlines, all of which are now comprehensively covered under the CalRecycle Informal Hearing Rules. By removing these subsections, the amendment ensures that all procedural requirements for administrative civil penalty actions are governed by a single, consistent, and centralized regulatory framework, reducing confusion and streamlining enforcement actions.

This deletion is necessary to prevent conflicting or duplicative procedures between this regulation and the CalRecycle Informal Hearing Rules. The prior version of subsections (b)–(g) predated the adoption of the Hearing Office rules and attempted to establish procedural steps that are now fully addressed in those regulations. Keeping these outdated provisions could create inconsistencies, particularly if future modifications are made to the Hearing Office rules. By removing these procedural requirements, the amendment ensures that all enforcement and adjudication processes follow a single,

uniform set of rules, enhancing clarity, efficiency, and due process protections for regulated entities.



## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 7. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

#### **CHAPTER 12. SHORT-LIVED CLIMATE POLLUTANTS**

#### **ARTICLE 16. ADMINISTRATIVE CIVIL PENALTIES**

#### **SECTION 18997.6. Department Procedures for Hearings and Penalty Orders**

##### **Subsection (a)**

The purpose of this amendment is to update and clarify the procedural framework for hearings conducted under this chapter by referencing CalRecycle's own hearing regulations. The previous regulation required hearings to follow the informal hearing requirements outlined in Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, which provided general administrative adjudication procedures but did not account for the CalRecycle Informal Hearing Rules. By instead referencing Title 14, California Code of Regulations, Sections 17063.1–17063.32, this amendment ensures that hearings are conducted in accordance with procedures specifically developed for CalRecycle's adjudicative processes.

This amendment is necessary to ensure that hearings conducted under this chapter follow procedures tailored to CalRecycle's specific regulatory and enforcement needs rather than relying solely on the general administrative adjudication procedures in Chapter 4.5 of the APA. The previous regulation existed prior to when CalRecycle had its own regulations for informal hearings. Leaving this version could lead to confusion about which procedures apply. By directly citing the CalRecycle Informal Hearing Rules, this amendment provides regulated entities, hearing officers, and stakeholders with clear guidance on the applicable procedures, ensuring greater consistency, efficiency, and due process protections in CalRecycle's informal hearings.

##### **Subsection (b)**

The purpose of deleting subsection (b) is to eliminate redundancy and prevent conflicts between this regulation and the CalRecycle Informal Hearing Rules. The prior provision outlined due dates and service methods, both of which are now comprehensively covered under the CalRecycle Informal Hearing Rules. By removing this subsection, the amendment ensures that all procedural requirements for administrative penalty orders are governed by a single, consistent, and centralized regulatory framework, reducing confusion and streamlining enforcement actions.

This deletion is necessary to prevent conflicting or duplicative procedures between this regulation and the CalRecycle Informal Hearing Rules. The prior version of subsection (b) predated the adoption of the Hearing Office rules and attempted to establish procedural steps that are now fully addressed in those regulations. Keeping these outdated provisions could create inconsistencies, particularly if future modifications are made to the Hearing Office rules. By removing these procedural requirements, the amendment ensures that all enforcement and adjudication processes follow a single,

uniform set of rules, enhancing clarity, efficiency, and due process protections for regulated entities.

## **ECONOMIC IMPACT FOR “MAJOR REGULATIONS”**

These proposed regulations do not meet the criteria for major regulations specified in Health and Safety Code section 57005(b) and do not need a Standardized Regulatory Impact Analysis. The estimated economic impact amount is below the \$50 million threshold for major regulations. CalRecycle estimates the economic impact of this regulation is negligible. The scope is limited to formalizing a set of procedures and rules for informal hearings, many of which are already in use. The Economic and Fiscal Impact Statement (STD 399) includes a discussion of alternatives as required by the California Environmental Protection Agency pursuant to Health and Safety Code section 57005.

## **ECONOMIC IMPACT ASSESSMENT**

The proposed regulations will have the following effects:

### **Creation or Elimination of Jobs Within the State**

CalRecycle has determined that the proposed regulations will not result in the creation or elimination of jobs within the State of California. The regulatory changes are procedural in nature and primarily serve to enhance consistency, accessibility, and efficiency in CalRecycle’s informal administrative hearing processes.

The proposed regulations standardize deadlines across multiple programs, formalize existing practices regarding access to interpreters and disability accommodations, and expand the use of electronic tools to improve accessibility. These changes do not impose new compliance burdens on regulated entities or necessitate additional staffing within CalRecycle. Instead, they streamline existing processes and improve administrative efficiency without affecting workforce demand in the private or public sector. Because these proposed regulations codify and refine current practices rather than introduce substantive new requirements, they will not impact employment levels within the regulated community, CalRecycle, or other governmental entities.

### **Creation of New Businesses or Elimination of Existing Businesses Within the State**

CalRecycle has determined that the proposed regulations will not result in the creation of new businesses or the elimination of existing businesses within the State of California. The proposed regulations are procedural in nature and do not impose new economic or operational burdens on businesses, individuals, or governmental entities.

These proposed regulations standardize hearing procedures across multiple programs, formalize access to interpreters and disability accommodations, and expand the use of electronic tools to improve access. Because these changes primarily clarify and codify existing practices rather than introduce new compliance obligations or costs, they will not impact the viability of businesses operating within the state.

Additionally, since informal administrative hearings are relatively rare and primarily affect a small subset of regulated entities engaged in disputes with CalRecycle, the proposed regulations will not influence business formation, expansion, or closure.

### **Expansion of Businesses Currently Doing Business Within the State**

CalRecycle has determined that the proposed regulations will not have an effect on the expansion of businesses currently operating within the State of California. The proposed regulations are procedural and primarily codify existing administrative hearing practices rather than imposing new substantive requirements or create economic incentives that would encourage business growth or expansion.

The proposed regulations standardize deadlines across multiple programs, formalize access to interpreters and disability accommodations, and expand the use of electronic tools to improve accessibility. While these changes improve efficiency and accessibility for individuals and entities involved in informal administrative hearings, they do not affect the scope of business operations or create conditions that would drive business expansion.

Additionally, because informal administrative hearings occur infrequently and impact a limited number of regulated entities, the proposed regulations will not alter the business environment in a way that would encourage or discourage expansion.

### **Anticipated Benefits of the Regulation**

The proposed regulations will enhance transparency, consistency, sustainability, and accessibility in CalRecycle's informal administrative hearing process. By codifying existing practices and formalizing procedures, these proposed regulations will provide clear, uniform guidelines that benefit both regulated entities and the public.

The proposed regulations improve transparency by clearly defining the procedural framework for informal administrative hearings, ensuring that all participants understand their rights, obligations, and the steps involved in resolving disputes. By standardizing deadlines and procedural requirements across multiple programs, the proposed regulations reduce uncertainty, promote fairness, and ensure that similarly situated parties are treated consistently. This increased predictability strengthens public confidence in the hearing process and CalRecycle's decision-making.

The proposed regulations contribute to sustainability by expanding the use of electronic tools in the hearing process. By increasing opportunities for electronic communication, filings, and remote participation, the proposed regulations reduce reliance on paper-based processes, minimize the need for in-person appearances, and promote more efficient use of resources. These improvements align with state efforts to reduce carbon emissions while maintaining effective delivery of public services.

Ensuring access to justice is a core objective of the proposed regulations. By formalizing procedures for requesting interpreters and disability accommodations, the proposed regulations remove barriers that might otherwise hinder participation in the hearing process. Expanding the use of electronic tools further enhances accessibility by allowing individuals and businesses to participate more easily in hearings. This is particularly valuable to those in remote locations or with mobility limitations.

In sum, the proposed regulations support a fair, transparent, and efficient hearing process that upholds the principles of due process while improving accessibility, sustainability, and consistency. These enhancements will benefit individuals, businesses, and government entities interacting with CalRecycle by providing a clearer, more predictable, and more inclusive administrative hearing framework.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT OR DOCUMENTS RELIED UPON**

CalRecycle utilized the following sources in the development of the proposed regulations:

- Attachment 1: Economic and Fiscal Impact Statement (STD 399)
- Attachment 2: STD 399 Appendix
- Attachment 3: Administrative Conference of the United States, Evidentiary Hearings Outside the Administrative Procedure Act
- Attachment 4: *In re Marriage of Khera and Sameer* (2012) 206 Cal.App.4th 1467
- Attachment 5: *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61
- Attachment 6: *Frost v. State Personnel Board* (1961) 190 Cal.App.2d 1
- Attachment 7: *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424
- Attachment 8: *Morris v. Williams* (1967) 67 Cal.2d 733

### **ANTICIPATED BENEFITS**

The proposed regulations will enhance the health and welfare of California residents, environmental sustainability, worker safety, fairness, and social equity by modernizing and streamlining CalRecycle's informal administrative hearing process. By codifying electronic hearings as the default, establishing uniform procedural deadlines, formalizing access to accommodations, and expanding the use of digital tools, these proposed regulations create a more accessible, efficient, and equitable system that benefits all participants.

The proposed amendments and adoptions in these regulations will provide the following anticipated benefits:

- Lower transportation-related pollution and emissions by eliminating unnecessary travel for hearings, supporting California's climate and air quality goals.
- Decreased paper waste and resource consumption by encouraging electronic filings and exhibits, reducing environmental impact and administrative costs.

- Reduced exposure to contagious illnesses by allowing participants, including those who are immunocompromised, to engage in hearings remotely, minimizing health risks.
- Increased efficiency in dispute resolution, ensuring that regulatory enforcement processes remain effective and do not result in unnecessary delays that could impact environmental or public health protections.
- Enhanced safety for agency staff by reducing in-person interactions that could become volatile or confrontational, mitigating the risk of workplace violence.
- Improved ergonomic working conditions for hearing officers, allowing them to conduct hearings from well-equipped, ergonomic workstations rather than temporary setups in conference rooms.
- Expanded access for rural participants, ensuring that individuals who may face financial or logistical barriers to travel can fully participate in the hearing process.
- Greater economic inclusion, as respondents and witnesses can attend hearings without needing to take days off work or incur travel expenses.
- Formalized interpreter and disability accommodation procedures, ensuring that individuals with language barriers or disabilities have meaningful access to the hearing process.
- Standardized deadlines and procedural clarity, reducing confusion and ensuring all participants receive equal treatment regardless of the program under which their case arises.
- Greater participation in hearings, as remote access makes it easier for affected individuals and stakeholders to present evidence and testimony that supports informed decision-making.

By modernizing the informal administrative hearing process, these proposed regulations will improve public health protections, enhance accessibility and fairness, support worker safety, and promote environmental sustainability. These benefits ensure that CalRecycle's informal administrative hearings remain effective, equitable, and efficient for all Californians.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND CALRECYCLE'S REASON FOR REJECTING THOSE ALTERNATIVES**

Set forth below are the reasonable alternatives that were considered and the reasons the alternatives were rejected:

### **Alternative 1**

**Alternative:** Send all cases to the Office of Administrative Hearings (OAH) for hearing and a proposed decision.

**Reason for Rejecting:** CalRecycle considered the alternative of referring all informal administrative hearings to OAH to be adjudicated by Administrative Law Judges (ALJs). However, this alternative was rejected due to its significant cost burden, inefficiency, and misalignment with the nature of informal hearings.

Referring all cases to OAH would impose an increase in annual costs of over \$3 million, which is substantially higher than maintaining an internal hearing office. CalRecycle has two hearing officers on staff who can conduct these hearings at a much lower cost than the \$422 hourly rate charged by OAH ALJs.

Additionally, ALJs handle a high volume of cases across multiple agencies, leading to scheduling delays. This prolongs dispute resolution, creating backlogs that could negatively impact regulated entities and program enforcement.

Moreover, OAH typically adjudicates more complex, formal administrative hearings involving extensive legal proceedings. Many CalRecycle cases involve straightforward regulatory compliance matters that are more efficiently handled through informal administrative hearings. Referring these cases to ALJs would be an unnecessary use of high-cost adjudication resources for matters that do not require that level of legal formality.

While ALJs at OAH also serve multiple state agencies and may not have specialized expertise in CalRecycle's regulations and policies, CalRecycle's hearing officers are familiar with the nuances of CalRecycle's regulatory framework, promoting consistency and efficiency.

Thus, given the excessive costs, inefficiencies, and lack of necessity for ALJ-level adjudication, referring all hearings to OAH is not a viable alternative. Maintaining an internal hearing office provides significant cost savings, faster case resolution, and specialized expertise, ensuring that hearings remain accessible, efficient, and aligned with CalRecycle's regulatory objectives.

## **Alternative 2**

**Alternative:** Do not adopt proposed regulations and instead rely on existing statutory and regulatory language.

**Reason for Rejecting:** CalRecycle considered maintaining the current system, in which each program operates under its own informal hearing procedures and deadlines without standardized regulations. However, this alternative was rejected due to inconsistencies in procedural requirements, lack of guidance for parties, barriers to accessibility, and missed opportunities to modernize the hearing process.

The existing regulations provide minimal guidance on how informal hearings should be conducted, often only stating that hearings will be conducted under Article 10, Chapter 4.5 of the Administrative Procedure Act (APA) without further details. Moreover, each program has its own deadlines and procedural rules, leading to inconsistencies and confusion for regulated entities and individuals navigating the process. Without standardized procedures, there is a risk of unequal treatment between different programs, as the resolution of similar disputes may vary based on which program's rules apply.

Additionally, the existing regulations do not codify a party's right to language assistance, which may discourage participation. The proposed regulations ensure that individuals who need interpretation receive it. Moreover, the current system does not reference electronic hearings as a default option, despite their proven benefits in reducing costs, increasing accessibility, and improving efficiency. Without formal recognition, parties may not be aware of the option to request electronic hearings, limiting their ability to participate remotely.

Maintaining the status quo would perpetuate procedural inconsistencies, limit accessibility, and fail to leverage modern technology to improve efficiency. The proposed regulations address these deficiencies by creating uniform deadlines, formalizing accessibility accommodations, and incorporating electronic hearing tools. These improvements enhance due process, reduce costs, and ensure fair and transparent hearings for all participants.

Because the status quo does not meet the needs of modern administrative hearings, this alternative was rejected in favor of a comprehensive regulatory framework that promotes clarity, fairness, and accessibility while improving efficiency within CalRecycle's hearing process.

## **ALTERNATIVES STATEMENT**

No reasonable alternative has been identified to the regulatory proposal within this Initial Statement of Reasons that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT, OR SPECIFIC ACTIONS OR PROCEDURES**

The proposed regulations codify specific technologies and procedures to modernize and enhance accessibility in CalRecycle's informal administrative hearings. These proposed regulations establish electronic hearings as the default format, formalize electronic document filing, and expand access to language and disability accommodations to ensure a fair and efficient hearing process.

CalRecycle considered whether performance standards could be used in place of the prescriptive requirements. However, performance standards alone would not sufficiently ensure consistency or enforceability across hearing participants and programs. Variations in implementation could lead to differential treatment of respondents, which the regulations are specifically designed to prevent.

Prescriptive standards (i.e., designating electronic hearings as the default and requiring digital filing) were determined to be necessary to achieve key modernization goals, including reduced travel costs, expanded access, and streamlined case management. At the same time, the regulations retain flexibility by allowing participants to request accommodations, including in-person hearings, when needed.



Accordingly, CalRecycle believes prescriptive standards are warranted to provide clear, predictable, and uniform procedures across CalRecycle's informal hearing process, while still retaining sufficient flexibility to respond to individual circumstances. These prescriptive approaches reflect administrative best practices and further California's policy goals of digital innovation, emissions reduction, and accessible hearings.

### **INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

Based on the Economic Impact Assessment, CalRecycle has made the initial determination that the proposed regulations will not have a significant adverse economic impact on businesses. The purpose of these proposed regulations is to standardize and modernize informal administrative hearing procedures, improving efficiency and accessibility without imposing new substantive compliance costs on regulated entities.

The proposed regulations do not create new obligations for businesses beyond ensuring fair and consistent hearing procedures. Instead, they codify best practices. Additionally, these proposed regulations do not impose mandatory fees or financial requirements on businesses. The procedural updates streamline existing processes and provide greater clarity and predictability in how informal hearings are conducted, benefiting businesses by reducing uncertainty and potential delays. For these reasons, CalRecycle has determined that the proposed regulations will not result in a significant adverse economic impact on businesses within the State of California.

### **FINDING ON NECESSITY TO REPORT**

CalRecycle has found that the proposed regulatory action does not mandate any reporting requirements pursuant to Government Code section 11346.3(d).

### **DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATIONS**

Pursuant to Government Code section 11346.2(b)(6), CalRecycle has evaluated this regulatory proposal and has determined that there are no federal laws or regulations addressing the same issues as the proposed regulations. The proposed regulations will not be duplicative of other existing regulations as federal law does not regulate hearings conducted pursuant to the California APA. Therefore, these proposed regulations do not duplicate or conflict with any existing federal law or regulation.