

PROPOSED REGULATION TEXT

CalRecycle Informal Hearing Rules Regulations
Executive Office

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CALIFORNIA CODE OF REGULATIONS

Note: Amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. The symbol “* * * *” means that intervening text not proposed for amendment is not shown.

TITLE 14.

DIVISION 7.

CHAPTER 1.

ADOPT

ARTICLE 6. HEARING OFFICE

Adopt sections 17063.1, 17063.2, 17063.3, 17063.4, 17063.5, 17063.6, 17063.7, 17063.8, 17063.9, 17063.10, 17063.11, 17063.12, 17063.13, 17063.14, 17063.15, 17063.16, 17063.17, 17063.18, 17063.19, 17063.20, 17063.21, 17063.22, 17063.23, 17063.24, 17063.25, 17063.26, 17063.27, 17063.28, 17063.29, 17063.30, 17063.31 and 17063.32, California Code of Regulations, title 14.

AMEND

DIVISION 2, CHAPTER 5, SUBCHAPTER 2, ARTICLE 4 AND ARTICLE 5

Amend sections 2100, 2130, 2385, and 2386, California Code of Regulations, title 14.

DIVISION 2, CHAPTER 5, SUBCHAPTER 6, ARTICLE 1

Amend section 2500.5, California Code of Regulations, title 14.

DIVISION 7, CHAPTER 4, ARTICLE 4

Amend section 17974, California Code of Regulations, title 14.

DIVISION 7, CHAPTER 6, ARTICLE 8.5

Amend section 18458, 18464 and 18466, California Code of Regulations, title 14.

DIVISION 7, CHAPTER 8, ARTICLE 5

Amend section 18643.0, California Code of Regulations, title 14.

DIVISION 7, CHAPTER 11, ARTICLE 3

Amend section 18971, California Code of Regulations, title 14.

DIVISION 7, CHAPTER 11, ARTICLE 4

Amend sections 18975.1 and 18975.2, California Code of Regulations, title 14.

DIVISION 7, CHAPTER 12, ARTICLE 16

Amend sections 18997.5 and 18997.6, California Code of Regulations, title 14.

ARTICLE 6: Hearing Office

Section 17063.1. Purpose and Applicability of Regulations

- (a) The Department establishes this article to create rules for informal hearings under the Department's jurisdiction conducted pursuant to Chapter 4.5 of the Administrative Procedure Act (Government Code section 11400 et seq.). This article of the California Code of Regulations is named and can be cited as "CalRecycle Informal Hearing Rules."
- (b) This article does not govern formal hearings conducted under Chapter 5 of the Administrative Procedure Act (Government Code sections 11500 through 11530), hearings overseen by local enforcement agency hearing officers and hearing panels, appeals of or petitions to stay decisions by local enforcement agencies, or other hearings conducted by local government entities.
- (c) This article does not govern emergency actions, including cease-and-desist orders or interim or temporary suspension orders, issued pursuant to express statutory authority.
- (d) If a statute contradicts or conflicts with this article, the statute prevails.
- (e) In the event of a conflict between this article and any other regulations governing informal hearing procedures under the Department's jurisdiction, this article shall control unless the other regulation requires the hearing to be conducted under Chapter 5 of the Administrative Procedure Act (Government Code sections 11500 through 11530), or the other regulation explicitly states that it is an exception to this article and provides alternative procedures.
- (f) Except to the extent prohibited by law, a person may waive a right conferred on the person by this article.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11415.40 and 11425.10, Government Code.

Section 17063.2. Definitions

(a) As used in this article, the following definitions apply:

- (1) "Business day" means all days except Saturdays, Sundays, and official California State Holidays.
- (2) "Case" means an application to seek review of a Department decision eligible for an informal administrative hearing. A case includes all stages of the informal adjudicative process, from filing a Notice of Defense to issuing a written decision, dismissal, or withdrawal of the Notice of Defense.
- (3) "CHO" means the CalRecycle Hearing Office.
- (4) "Day" means a calendar day, unless otherwise specified.
- (5) "Director" means the Director of the Department of Resources Recycling and Recovery.
- (6) "Discovery" means the process of requesting and disclosing information and evidence that is relevant to the case as conducted pursuant to section 17063.13.
- (7) "Document" means any pleading, motion, brief, memorandum, notice, or other paper filed in a case before the CHO.
- (8) "Ex parte communications" means communications as defined in Government Code 11430.10.
- (9) "Good cause" means a reason found by the presiding officer to be legally sufficient.
- (10) "Hearing" means an informal adjudicative proceeding on the merits of the case.
- (11) "Motion" means a written or oral request that the presiding officer take some action.
- (12) "Proof of service" means a signed statement that a document was served on the parties consistent with section 17063.11.
- (13) "Protective order" means a ruling issued by the presiding officer to prevent the disclosure of sensitive information or to regulate how information is disclosed during the case.
- (14) "Record" means all documents and evidence about a case submitted to the CHO by a party to the case, including any item contained in the oral

hearing record or written record, and any information submitted but not admitted into evidence. The term also includes all final written correspondence concerning the case between the CHO and the parties, including letters, orders, and the hearing transcript.

(15) "Relevant evidence" means any evidence, including evidence relevant to the credibility of a witness or hearsay declarant, tending to prove or disprove any disputed fact, document, or other evidentiary item that is of significance to the case.

(16) "Representative" means any individual who is at least 18 years of age and chosen by a party to represent that party in a case before the CHO. A person whose only function is to interpret for a party to a case is not a representative.

(17) "Respondent" means any person against whom a statement of issues or statement of charges is filed.

(18) "Rule" means a section of the CalRecycle Informal Hearing Rules.

(19) "Service" of a document or to "serve" a document means to send or deliver it as outlined in section 17063.12.

(b) These definitions supplement those in Government Code sections 11405.10 through 11405.80.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20 Government Code.

Section 17063.3. Pleadings

(a) The CalRecycle Informal Hearing Rules do not create a right to a hearing where not already provided by law. The Department is only required to file a statement of issues or statement of charges where the relevant statute or regulation expressly provides for an informal administrative hearing based on the Department's action.

(b) Where the Department has denied the granting, issuing, or renewing of a right, authority, license, certificate, registration, or privilege, the Department shall issue a statement of issues to the respondent.

(1) The statement of issues shall be a written document specifying the statutes and regulations with which the respondent shall show compliance by producing proof at the hearing.

(2) The respondent has the burden to prove their fitness and qualifications for a right, authority, license, certificate, registration, or privilege by a preponderance of the evidence.

- (c) (1) The Department shall issue a statement of charges, such as an accusation, citation, or notice of violation, to the respondent in disciplinary proceedings, which include the following circumstances:
- (A) The Department has revoked, suspended, limited, or conditioned an existing right, authority, license, certificate, registration, privilege, or stewardship plan.
 - (B) The Department has assessed an administrative civil penalty.
 - (C) The Department seeks to recover funds paid to a program participant by the Department.
 - (D) The Department has ordered restitution.
 - (E) The Department seeks to remove a respondent from a list of compliant entities or add a respondent to a list of noncompliant entities.
- (2) The statement of charges shall be a written document setting forth in ordinary and concise language the acts or omissions with which the respondent is charged, such that the respondent may prepare a defense.
- (3) The statement of charges shall specify the statutes and regulations the respondent is alleged to have violated and shall provide the factual basis for believing each violation occurred.
- (4) The Department has the burden to prove the allegations within the statement of charges by a preponderance of the evidence.
- (d) The statement of issues or statement of charges shall do all of the following:
- (1) Be served in accordance with section 17063.12 to the mailing address(es) on file with the Department, or electronically with the respondent's consent.
 - (2) Inform the respondent of the right to a hearing and that Chapter 5 of the Administrative Procedure Act does not apply to the proceeding.
 - (3) Include a copy of Government Code section 11425.10 and a citation to the CalRecycle Informal Hearing Rules.
 - (4) Include a document to serve as the respondent's "Notice of Defense," as detailed in section 17063.4.
- (e) At any time before the matter is submitted for decision, the Department may file an amended or supplemental pleading under subdivisions (b) and (c) of this rule.
- (1) All parties shall receive notice of the filing.
 - (2) If the amended or supplemental pleading presents new charges, the Department shall afford the respondent a reasonable opportunity to prepare a defense to the new charges but shall not require additional hearing days unless the presiding officer in their discretion so orders.

- (3) Any new charges shall be deemed controverted, and any objections to the amended or supplemental pleading shall be noted in the record.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.4. Notice of Defense and Notice of Hearing

- (a) For the purpose of this section, a "Notice of Defense" is a written document submitted by a respondent in response to a section 17063.3 pleading, which requests a hearing and outlines the defenses, objections, or arguments the respondent intends to raise.
- (b) Within 15 days of being served with a section 17063.3 pleading, the respondent may request a hearing by filing a Notice of Defense with the Department at the mailing address specified in the pleading.
- (1) A Notice of Defense is deemed to be filed if it is postmarked within the 15-day period after service of the statement of issues or statement of charges. An electronically served Notice of Defense is deemed to be filed on the date emailed. The right to an informal hearing is waived if the respondent does not return the Notice of Defense within the 15-day period.
- (2) The Notice of Defense shall identify the basis for the hearing request, disclose whether the respondent has admissions, objections, or defenses to the pleading's allegations, and provide contact information for the respondent and any representative. The respondent shall sign the Notice of Defense, certifying or declaring that the information provided is true and correct to the best of their knowledge.
- (c) After filing a Notice of Defense, the respondent shall keep the CHO and all other parties informed of the respondent's current contact information for purposes of service until the decision issues. Any changes to a respondent's contact information for service shall be reported to the CHO within seven days of the change.
- (d) Once the Department receives the Notice of Defense, it shall file a request to set a hearing with the CHO within five business days.
- (e) A hearing requested by the party shall be scheduled to begin within 90 days after the Department receives the Notice of Defense. This subdivision may be waived by a stipulation of all the parties and does not apply where there is good cause to continue a hearing beyond 90 days.
- (f) After the CHO receives the Notice of Defense, it shall assign a hearing officer to preside over the case. After assignment, the CHO shall issue a Notice of Hearing to the parties. The Notice of Hearing shall contain all of the following information:

- (1) The name of the assigned hearing officer.
- (2) Date and time of the hearing, and location if the hearing is in-person.
- (3) The CHO's contact information, including the applicable telephone number.
- (4) The respondent's right to representation at their own expense.
- (5) The right to present relevant evidence and cross-examine witnesses testifying against the respondent.
- (6) The right to seek language assistance and disability accommodations.
- (7) Information about how to file documents with the CHO.
- (g) The Notice of Hearing or Notice of Continued Hearing shall be served at least 10 days before the hearing unless waived by the party receiving notice. A Notice of Hearing or Notice of Continued Hearing served in accordance with section 17063.12 shall be considered effective if served at the address last provided by the party to the CHO, even if delivery is refused or if the notice is not accepted at that address.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.5. Representation in Informal Hearings

- (a) The respondent may represent themselves in a case or may appear through a representative. A representative is not required to be an attorney. Following notification that the respondent is represented by a person other than themselves, all further communications regarding the proceedings shall be directed to that representative.
 - (1) Notwithstanding subdivision (a), the respondent shall not be represented by an attorney who has been disbarred or suspended by the California Supreme Court for reasons other than no payment of California State Bar fees; who has been placed on involuntary inactive enrollment status by the California State Bar; or who has resigned from the California State Bar while disciplinary action was pending.
 - (2) The right to representation is at the respondent's own expense.
- (b) If the respondent elects to appear through a representative, the respondent or representative must provide the CHO and all other parties with a statement from the respondent, authorizing the representation. The representative shall also provide written notice to the CHO and all other parties of their name, address, bar number (if applicable), telephone number, and email address within seven days after assuming representation.

(c) A representative may withdraw representation by filing a written notice with the CHO and serving a copy on all parties. The written notice shall include the last known contact information of the formerly represented respondent.

(1) After the withdrawal, the formerly represented respondent is responsible for preparation and representation throughout the remainder of the case, unless and until the respondent retains new counsel or another representative.

(2) Withdrawal or change of counsel or other representative does not alone constitute good cause for continuance of a previously scheduled hearing.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.6. Presiding Officer

(a) All informal hearings shall be overseen by a hearing officer designated by the Director, or a person acting in the capacity of the Director. Once assigned to the case, a hearing officer becomes the “presiding officer” for that case.

(b) The presiding officer shall comply with the separation of functions and disqualification provisions contained within Government Code sections 11425.30 and 11425.40.

(c) Parties do not have the right to peremptory challenges of the presiding officer.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11425.10, 11425.30 and 11425.40, Government Code.

Section 17063.7. Ex Parte Communications

(a) While a case is pending before the CHO, no party or interested person shall engage in ex parte communications with the presiding officer, the Director, or a person acting in the capacity of the Director.

(b) A communication made on the record at a conference or hearing is not an ex parte communication.

(c) The presiding officer shall promptly notify all parties of any ex parte communication that comes to their attention and shall provide an opportunity for all parties to respond to the communication.

- (d) The presiding officer has the authority to impose sanctions on any party or interested person found to have willfully engaged in prohibited ex parte communications.
- (e) A communication otherwise prohibited under subdivision (a) is permissible in any of the following circumstances:
 - (1) The communication is required for the disposition of an ex parte matter specifically authorized by statute.
 - (2) The communication concerns a matter of administration, procedure, or practice not in controversy, such as a request for a continuance, language assistance, or disability accommodations.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11430.10 through 11430.80; and 11455.10, Government Code.

Section 17063.8. Disability Accommodations

- (a) In cases where a party, representative, or witness has a disability requiring accommodation, the relevant individual shall be responsible for requesting an accommodation from the CHO.
- (b) For the purposes of this section, the following definitions apply:
 - (1) "Disability" means any mental or physical disability as defined in Government Code sections 12926 and 12926.1.
 - (2) "Accommodations" means reasonable modifications that make services, programs, or activities readily accessible to and usable by persons with disabilities. Accommodations may include changing procedures, providing assistive devices, or assigning assistive services.
- (c) To request an accommodation, the applicant may use the form provided by the CHO, submit a request in another written format, or make an oral request. Requests for accommodation shall do all of the following:
 - (1) Identify the case name and file number.
 - (2) Name the person with disabilities and their role in the case.
 - (3) Describe the desired accommodation.
 - (4) State the impairment that necessitates the accommodation.
- (d) Disability accommodation requests shall not address substantive issues involved in a legal proceeding. Additional information, including medical documentation, may be requested by the CHO as support for the accommodation request.

- (e) Upon submitting a request, the requestor must enter an interactive process to assist in determining what, if any, reasonable accommodation may be provided. The interactive process includes providing additional information and timely correspondence with the CHO as needed to address the accommodation request.
- (f) Accommodation requests shall be submitted to the CHO as far in advance as possible and at least 14 days before the date when the accommodation is needed. Requests submitted less than 14 days before the date of implementation will still be considered, and the CHO will make reasonable efforts to provide the requested accommodation by that date unless the late submission makes implementation infeasible.
- (g) Grounds for denying a request for disability accommodation include any of the following:
 - (1) The request for accommodations failed to satisfy the requirements of this rule.
 - (2) Providing the accommodation would cause an undue hardship.
 - (3) Providing the accommodation would fundamentally alter the nature of the services being provided.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.9. Interpreters at Informal Hearings

- (a) The Notice of Hearing shall also include notice of a party's right to request an interpreter for a party or witness who cannot speak or understand English, who has Limited English Proficiency, or who is deaf or hard of hearing as defined under Evidence Code section 754.
- (b) A request for an interpreter shall be submitted to the CHO at least 14 days before the hearing commences. The request shall include sufficient information to enable the CHO to obtain an interpreter with appropriate skills.
- (c) The Department shall pay the cost of providing an interpreter unless the Department files a motion establishing that another party is required to pay interpretation costs based on equitable considerations. Those considerations include:
 - (1) The ability of the party who requested the interpreter to pay interpretation costs.
 - (2) A party's default at a hearing in which that party requested an interpreter.

(3) A party's request to withdraw a case or continue a hearing date less than two business days before the hearing in which that party requested an interpreter.

(d) An interpreter used at a hearing shall not have any interest in the case.

(e) An interpreter at a hearing shall be sworn by oath or affirmation to perform their duties truthfully. The oath or affirmation shall be substantially similar to the following:

"Do you swear or affirm that, to the best of your skill and judgment, you will make a true interpretation of the questions asked and the answers given and that you will make a true translation of any documents that require translation?"

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11425.10, 11435.05, 11435.10, 11435.15, 11435.25, 11435.60 and 11435.65, Government Code.

Section 17063.10. Filing of Documents

(a) Except as otherwise provided in this article, the following requirements apply to the filing of any document with the CHO.

(1) Documents shall be filed with the CHO by electronic means unless the party is unable to do so. The original document need not be filed with the CHO unless otherwise ordered by the presiding officer. The CHO shall provide the parties with instructions for the electronic submission of documents in the Notice of Hearing.

(2) Documents delivered to the CHO by the U.S. Postal Service are deemed filed on the business day received by the CHO. Documents hand-delivered to the CHO or received by electronic means 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.

(b) By filing a document with the CHO, a party or representative certifies all of the following in good faith:

(1) The party or representative has read the document.

(2) The party or representative is not presenting it for any improper purpose, such as to harass, to cause unnecessary delay, or to increase the cost of litigation needlessly.

(3) Any legal claims are consistent with existing law or a good-faith argument to change existing law.

(4) Any factual claims have or are likely to have evidentiary support.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.11. Proof of Service

(a) Each document filed with the CHO shall be accompanied by proof of service on each party or its representative of record on the date of service. The proof of service shall be a declaration stating the title of the document served or filed, the name and address of the person making the service, and that he or she is over the age of 18 years and not a party to the matter. The proof of service shall state the method of service and provide additional information as detailed below:

(1) Where service is made by personal delivery, the declaration shall state the date and place of delivery and the name of the person to whom the documents were handed. Where the person making the service is unable to obtain the name of the person to whom the documents were handed, the person making the service may substitute a physical description for the name.

(2) Where service is made by first-class mail or overnight delivery, the declaration shall state the date and place of deposit in the mail, the name and address of the person served as shown on the mailing envelope, and that the envelope was sealed and deposited in the mail with the postage fully prepaid.

(3) Where service is made electronically, the declaration shall state the name and email address of the person making the service, the name and email address of the person served, and the date sent.

(4) The proof of service shall be signed by the person making it and contain the following statement above the signature:

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this Declaration was executed at [city, state] on [date]."

The name of the declarant shall be typed and signed below this statement.

(b) A proof of service made in accordance with California Code of Civil Procedure section 1013a complies with the requirements of this section.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.12. Service Requirements

(a) Unless a specific method of service is prescribed by statute or this article, service may be made by any method authorized under the California Code of Civil Procedure or by any of the means described below:

(1) For service by personal delivery, service is complete when the document is handed to an individual at least 18 years old at the residence or business of the person being served.

(2) For service by first-class, registered, or certified mail, service is complete at the time the document is deposited in the mail with postage prepaid to be sent to the recipient's last known address.

(3) For service by overnight delivery, service is complete at the time the document is deposited with the express service carrier to be sent to the recipient's last known address.

(4) For electronic service, service is complete when the document is sent in portable document format (PDF) to the e-mail address provided by the recipient, who consented to electronic service. The e-mail must include the contact information of the sender, identify the case, and briefly describe the attached document in the subject line or body. The total size of a single e-mail and its attachments must not exceed 25 megabytes.

(b) Parties who consent to electronic service are responsible for monitoring their e-mail and notifying the CHO and all other parties in writing if they revoke their consent.

(c) Service on a party appearing through a representative must be made on the representative.

(d) Actual receipt of a document waives any claim of defective service, except for claims of late service.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20 and 11440.20, Government Code.

Section 17063.13. Discovery

(a) A party may provide a written request to another party at least 30 days before the informal hearing requesting to do one or both of the following:

(1) Obtain the names of the witnesses the other party intends to present at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called.

(2) Provide a copy of all written documents and an opportunity to inspect all tangible evidence the other party proposes to offer as exhibits at the hearing.

- (b) A party who receives a written request under subdivision (a) shall comply with the request within 14 days.
- (c) A party shall have a duty to supplement answers provided in response to subdivision (a) to include information thereafter acquired, to the extent that the information will be relied on in the hearing.
- (d) A party may move for the presiding officer to issue an order authorizing discovery in accordance with the Government Code section 11507.6 if exceptional circumstances exist.
- (e) A party may move for the presiding officer to issue an order compelling discovery authorized by subdivisions (a) or (d) if the moving party establishes that the other party has not complied with a discovery request and the request is not overly burdensome, invasive, or otherwise not in the interest of fair and efficient adjudication of the hearing.
- (1) The parties shall meet and confer for an informal resolution of the discovery dispute before filing a motion to compel.
- (2) The motion shall be filed within seven days after the party first demonstrated failure or refusal to comply, or 15 days after the request was made and the party failed to reply to the request, whichever period is longer.
- (3) The presiding officer shall decide the motion on the documents filed by the parties and any oral argument and additional evidence requested by the presiding officer.
- (4) The order on a motion to compel shall be in writing and shall specify the date on which it is effective.
- (5) If a party fails, without good cause, to comply with the order, the presiding officer may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record. Where a willful suppression of evidence is shown to exist in violation of these rules, it shall be presumed that the findings, conclusions, and opinions therein contained would be adverse, if produced.
- (f) This section shall not apply to any evidence used solely to impeach a witness.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.14. Use of Subpoenas

- (a) Parties shall arrange for the presence of their witnesses at the hearing. Subpoenas are permitted but discouraged because the parties shall first try in good faith to secure the voluntary participation of their witnesses.

- (b) In accordance with the procedures set forth in Government Code sections 11450.05 to 11450.50, subpoenas may be issued for the attendance of witnesses at the hearing, and subpoenas duces tecum may be issued for the production of documents at any reasonable place and time or at the hearing. A subpoena duces tecum shall not be used to circumvent the scope of discovery authorized by section 17063.13.
- (c) A party requesting a CHO hearing officer issue a subpoena or subpoena duces tecum shall make a showing of the need therefor and submit the request at least 40 days before the date specified for commencement of the hearing in the Notice of Hearing or Notice of Continued Hearing. The burden of serving and enforcing a subpoena shall be upon the party who requested the subpoena.
- (d) All subpoenas and subpoenas duces tecum shall be served in accordance with Government Code section 11450.20 at least 30 days before the date specified for commencement of the hearing in the Notice of Hearing or at least ten days before the date specified for commencement of the hearing in the Notice of Continued Hearing.
- (e) Any motion made under Government Code section 11450.30 shall be filed with the presiding officer as soon as reasonably possible, but no later than five days after service of the subpoena or three days before the date specified for appearance or production of records, whichever is earlier. The movant shall serve copies of the motion on all parties. The motion shall comply with section 17063.16.
- (f) Upon a timely motion of a party or a witness, or on the presiding officer's own motion, the presiding officer may order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.
- (g) Witnesses and custodians of records subpoenaed for any hearing are entitled to fees and mileage as outlined in Government Code section 11450.40. The party requesting the subpoena shall be responsible for paying all fees and costs associated with the subpoena, including witness fees and mileage. If the CHO issues a subpoena on behalf of a self-represented party, the self-represented party shall bear the financial responsibility for all associated costs.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20 and 11450.05 through 11450.50, Government Code.

Section 17063.15. Prehearing and Status Conferences

- (a) If ordered by a presiding officer, a prehearing or status conference shall be held at any time before a hearing or a decision on a case conducted without a hearing.
- (1) A party may request a conference by filing a request with the CHO.
- (2) If the presiding officer finds a conference is necessary, the presiding officer shall issue an order detailing the date, time, and conditions of the conference.
- (3) Unless otherwise directed by the presiding officer, conferences shall not be on the record.
- (b) If ordered by the presiding officer, the parties shall each submit a written prehearing conference statement in advance of the conference. That statement shall address: the projected length of the hearing; the issues presented in the case; the number of proposed exhibits and whether parties stipulate to joint exhibits; the number of proposed witnesses who may testify at the hearing; any motions that need to be considered; any need for interpreters or disability accommodations; whether the parties would like the CHO to assist in settlement discussions; and any other matters necessary for an orderly and efficient hearing.
- (c) After a prehearing conference, the presiding officer shall issue a written prehearing conference order that incorporates the matters determined at the conference.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.16. Motions

- (a) A party may file a motion with the CHO before the decision. The following limitation applies to a case under this article:
- (1) Motions to dismiss shall not be addressed until after the case is submitted for decision.
- (b) Unless made during a prehearing conference or on the record at the hearing, all motions shall be in writing.
- (c) Without prior permission from the presiding officer, no motion or brief shall exceed 20 double-spaced typed pages in length, excluding exhibits. The font size shall be a minimum of 12-point, with no less than one-inch margins. The first page of every motion shall contain: the case name, the file number, and the name of the presiding officer, if known. Every motion shall state the legal and factual reasons for the motion and what the party wants the presiding officer to do.

- (d) When a motion is based on information not in the record, a party may support or oppose the motion with affidavits, declarations, or other documents.
- (e) Except as otherwise ordered by the presiding officer, a separate memorandum of points and authorities need not be filed with a motion.
- (f) Before filing any motion, a party shall make a good-faith effort to ask all other parties if they agree to the motion. The motion shall describe that effort and say whether other parties agree with or oppose the motion.
 - (1) For the purposes of this section, a “good-faith effort” means a reasonable attempt, considering all the circumstances, to contact a party or representative in person, by telephone, by email, or by other means.
 - (A) Contact by mail is a good-faith effort only if both the party’s telephone number and email address are not reasonably available.
 - (B) By itself, serving a party with the motion is not a good-faith effort.
- (g) Unless otherwise provided by the CalRecycle Informal Hearing Rules or ordered by the presiding officer, all parties opposing a motion shall have 10 days from the service of the motion to file and serve a response. No further filings related to the motion are permitted unless ordered by the hearing officer.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.17. Continuances

- (a) To request a continuance, a party shall submit a continuance motion to the CHO at least five business days before the scheduled hearing or conference, absent exceptional circumstances. The requesting party shall show good cause for the continuance to be granted and provide alternative hearing dates that are agreeable to all parties.
 - (1) For a continuance, good cause shall be evaluated considering relevant issues and events beyond the party’s control, the length of any delay in seeking a continuance, the diligence of the party making the request, and any potential prejudice to the other party.
- (b) When a continuance is approved, the CHO shall send a Notice of Continued Hearing to all parties with the new date and time for the hearing. The Notice of Continued Hearing shall comply with the same requirements as a Notice of Hearing, as provided in section 17063.4.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.18. Public Observation of Informal Hearings

- (a) The Department's informal hearings shall be open to public observation. Notwithstanding that provision, grounds for closing a hearing to public observation include:
 - (1) Excluding individuals whose behavior disrupts the orderly conduct of the hearing.
 - (2) Limiting attendance due to space constraints in the hearing facility.
 - (3) Taking other actions to ensure due process and maintain order during the hearing.
- (b) For hearings conducted electronically, all of the following apply:
 - (1) Non-parties wishing to observe a remote hearing shall submit a written request to the CHO at least one business day before the hearing starts.
 - (2) The presiding officer has the authority to allow late requests if granting the request serves the public interest.
- (c) Prehearing conferences, status conferences, and settlement conferences shall not be open to the public.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11420.30, 11425.10 and 11425.20, Government Code.

Section 17063.19. Hearing Procedures

- (a) Hearings shall be conducted by electronic means unless the presiding officer orders parties to appear in person. The CHO shall provide instructions on how to participate in the videoconference, identify the necessary technological equipment, and indicate what to do if technical problems arise.
 - (1) A party may object to a hearing being conducted electronically by filing a written motion with the CHO or making an oral objection at a prehearing conference. An objection to conducting the hearing by electronic means shall be submitted to the CHO at least 14 days before the scheduled hearing. If a hearing is held entirely in person, the location shall be the Department's Sacramento office. If neither an entirely electronic nor entirely in-person hearing provides a party an opportunity to participate and observe exhibits, a hybrid hearing shall take place. In a hybrid hearing, parties and witnesses may participate both in person from the Department's Sacramento office and fields office maintained by the Department and electronically over videoconference.

- (b) At a hearing, a party shall have all of the following rights:
- (1) To testify and to have other witnesses testify for them.
 - (2) To cross-examine witnesses called by another party.
 - (3) To request that any prospective witness, other than a party or their representative, be excluded from the hearing until their testimony.
 - (4) To examine all exhibits offered into evidence by another party.
 - (5) To object to the admission of any testimony or other evidence.
 - (6) To appear with a representative, as provided in section 17063.5.
- (c) If a respondent chooses not to testify, they may still be called and questioned by the Department.
- (d) The parties have the right to provide documentary, demonstrative, testimonial, and physical evidence at the hearing. The presiding officer shall decide what evidence shall be admitted into the record.
- (e) At a hearing, all closing arguments shall be provided orally unless the presiding officer orders otherwise.
- (f) All hearing officers employed by the Department are authorized to administer oaths.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20 and 11440.30, Government Code.

Section 17063.20. Written Cases

- (a) If specified in statute or upon a request approved by the presiding officer, a case may be conducted solely through written submissions, without a hearing.
- (b) For a written case, the presiding officer shall issue an order establishing a briefing schedule. The briefing schedule shall include deadlines for the submission of written statements, responses, and replies, as applicable. The following framework shall apply unless the presiding officer determines that a different schedule or process is necessary to ensure fairness, efficiency, or to accommodate the complexity of the case:
- (1) No later than 30 days after filing the Notice of Defense, the respondent shall submit a written statement to the CHO and the opposing party. This statement shall identify the legal and factual grounds for challenging the Department's action and may include supporting documentary evidence, declarations, and affidavits. No later than 15 days after receipt of the respondent's written statement, the Department may submit a response to the CHO, with a copy

sent to the respondent. The response may include supporting documentary evidence, declarations, and affidavits. No later than seven days after receipt of the Department's response, the respondent may submit a written reply to the CHO, with a copy sent to the Department. The reply shall be limited to addressing arguments and evidence raised in the Department's response and shall not introduce new evidence or raise new legal or factual grounds.

(2) Any supporting documentary evidence, declarations, or affidavits submitted with a written statement, response, or reply shall be marked and identified on an exhibit list attached to the filing.

(c) The presiding officer may modify the deadlines or procedures outlined in subdivision (b) to accommodate case-specific circumstances, including but not limited to the complexity of the case, the availability of the parties, or the volume of evidence to be submitted. Any modifications shall be specified in the order establishing the briefing schedule.

(d) After submission of written arguments, the presiding officer has the authority to request additional information, including testimony.

(e) A party may request judicial review of the decision in a written case consistent with section 17063.29.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.21. Presentation of Evidence

In an informal hearing before the CHO, all of the following shall apply:

(a) Oral evidence shall only be offered under oath or affirmation.

(b) The hearing need not adhere to technical rules of evidence. Any relevant evidence that a reasonable person would consider reliable in a serious matter can be considered.

(c) Hearsay evidence is allowed to supplement or explain other evidence. If the opposing party objects, hearsay evidence shall not be sufficient in itself to support a factual finding unless it would be admissible over objection in a civil action.

(d) A person can prevent disclosure of relevant evidence if it is privileged by law. Where documents have been withheld based on privilege, the presiding officer has the authority to order a party to disclose the documents to the presiding officer for private review and provide a privilege log describing withheld documents. The presiding officer has the discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. The presiding

officer has the authority to take official notice of any generally accepted technical or scientific matter within the Department's field, and of any fact which may be judicially noticed in California.

- (e) Where the evidence necessary to establish an essential fact lies solely within the knowledge and competence of one of the parties, that party has the burden of providing evidence on the issue although the party may not bear the ultimate burden of proof in the case.
- (f) If a party offers weaker and less satisfactory evidence when the party could have produced stronger and more satisfactory evidence, the evidence offered receives less weight.
- (g) In determining what inferences to draw from the evidence or facts in the case, the presiding officer may consider, among other things, the party's failure to explain or to deny through testimony such evidence or facts in the case against the party, or the party's willful suppression of relevant evidence.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.22. Confidentiality, Redactions and Protective Orders

- (a) All documents and exhibits submitted to the CHO shall be presumed to be public records unless confidentiality is otherwise required by law.
- (b) Parties shall perform diligent redactions of sensitive personal information before submitting a document to the CHO. At a minimum, parties shall redact all of the following information from exhibits submitted to the CHO:
 - (1) Driver's license numbers.
 - (2) Dates of birth.
 - (3) Social Security numbers.
 - (4) Criminal Identification and Information and National Crime Information numbers.
 - (5) Medical or psychiatric information.
 - (6) Financial account numbers.
 - (7) Names of minors.
- (c) If the sensitive personal information on a page is so comprehensive that redactions are impracticable, or if the information subject to redaction is necessary to prove a material fact in dispute, the party may request that the relevant page(s) be submitted under a protective order.

- (d) To request a protective order, a party shall make a request to the CHO that explains the reasons for the request and identifies the specific information or documents that require protection.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.23. Use of Affidavits

- (a) The parties may submit affidavits for consideration as evidence.
- (b) An affidavit shall be signed under penalty of perjury by the person making it. It shall include a statement above the signature similar to the following:
“I declare under penalty of perjury under the laws of [the jurisdiction where executed] that the foregoing is true and correct, and this affidavit was executed at [insert city, state] on [insert date].”
- (c) At any time 14 or more days before a hearing or a continued hearing, a party may give the opposing party or parties a copy of any affidavit they plan to introduce as evidence, along with a notice as described in subdivision (d). The opposing party has seven days after receiving the affidavit to request to cross-examine the person who made it. If a timely cross-examination request is not made, cross-examination of the person who made the affidavit shall be waived. If the affidavit is introduced in evidence, it shall be treated as if the person had testified orally. If a timely cross-examination request is made but the person who made the affidavit does not testify at the hearing, the affidavit may be introduced, but it shall only be given the same effect as other hearsay evidence.
- (d) The notice mentioned in subdivision (c) shall be a separate document served along with the affidavit. It shall be titled “Notice of Intent to Use Affidavit in Lieu of Oral Testimony.” The notice shall be similar to the following:
“The accompanying affidavit of [name of affiant] will be introduced as evidence at the hearing in [title of proceeding]. [Name of affiant] will not be called to testify orally, and you will not be entitled to question them unless you notify [name of proponent or representative] at [address] that you wish to cross-examine the affiant. To be effective, your request must be mailed or delivered to [name of proponent or representative] on or before [a date seven days after the date of mailing or delivering the affidavit to the opposing party].”

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.24. Voluntary Withdrawal

- (a) The respondent may move to withdraw their case at any time before a decision is issued. A request to withdraw a case shall be submitted in writing unless it is made orally on the record at the hearing. The presiding officer may grant the motion without waiting for a response from the Department.
- (b) The parties may file a joint motion for withdrawal of a case.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.25. Default Order

- (a) A party's failure to appear, without good cause, at a scheduled conference or hearing constitutes grounds for the presiding officer to find the party in default.
 - (1) A default by the respondent shall result in dismissal of the case, with prejudice.
 - (2) A default by the Department shall result in a reversal of the Department's initial decision in the case.
- (b) To request reinstatement of a proceeding in the case of a default order, a party must submit a request for reinstatement within 14 days of service of the default order. A request for reinstatement that makes a showing of good cause by containing sufficient facts to establish a reasonable basis for the failure to appear at the hearing constitutes grounds for a presiding officer to reinstate the proceeding.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.26. Settlement Conferences and Agreements

- (a) The parties shall promptly notify the CHO of any resolution that terminates a case. The CHO shall vacate all hearing dates upon receipt of a written request and notice of final resolution of the case from the Department. A copy shall be served on all other parties. Notice of final resolution of a case consists of written confirmation from the Department that all parties have signed a final written agreement resolving the case (subject to approval by the Director or the Director's designee) or that the Department has taken any unilateral actions legally required to withdraw, dismiss, or otherwise resolve the case. A copy of the signed settlement, stipulation, order, or any other paperwork terminating a matter

before the CHO, or the first page and signature pages thereof, shall be filed with the CHO. A respondent may request a settlement conference on the Notice of Defense form or by filing a request with the CHO at any time before the hearing. If the Department also agrees to participate in a settlement conference, the CHO shall set a date and time for the conference. Each party or representative who attends the settlement conference shall be familiar with the facts and issues in the case and shall have authority, or be able to obtain authority immediately by telephone, to negotiate settlement terms subject to Department approval. Each party shall file a written settlement conference statement with the CHO at least five business days before the settlement conference. The settlement conference statement shall contain a detailed statement of facts and a good-faith settlement proposal.

(1) The settlement conference statement, other settlement materials, and settlement discussions shall not be disclosed to the presiding officer and are not part of the case record unless the parties stipulate otherwise.

(2) Parties may request that settlement conference statements not be shared with opposing parties and their representatives by adding a conspicuous label of "Confidential" to the statement's first page.

(b) Any settlement shall be recorded in a written stipulation, settlement agreement, consent order, or an oral agreement placed on the record.

(c) Unless otherwise stipulated by the parties, the hearing officer at the settlement conference shall not preside over the hearing on the merits.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11420.10, 11420.30 and 11415.60, Government Code.

Section 17063.27. Decisions

(a) The presiding officer shall prepare and issue a written decision based on the record within 60 days after the case is submitted.

(1) The decision shall include findings of fact and conclusions of law that support the determination.

(2) The decision or order shall be served on all parties within five business days of issuance.

(b) The decision shall become final and effective 30 days after service unless otherwise stated.

(c) The Director may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(1) A legal or policy determination is significant if it establishes a new rule of law or policy, resolves an unsettled area of law, or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(2) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, or Department operations.

(3) A legal or policy determination is likely to recur if it is of continuing public interest because of the frequency or the ongoing likelihood of occurrence.

(4) The Department shall maintain a publicly accessible index of decisions designated as precedent in accordance with Government Code section 11425.60.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20, 11425.10, 11425.50 and 11425.60, Government Code.

Section 17063.28. Correction of Clerical Errors

(a) Within 15 days after service of a copy of the decision on a party, the party may file a motion for the CHO to correct a clerical error in the decision.

(1) Clerical errors include any of the following:

(A) Typographical errors in names, dates, statutory citations, or mathematical calculations.

(B) Unintended omissions of information like restitution or civil penalty amounts.

(2) The motion shall state the specific grounds for which correction is sought and how correction will clarify the presiding officer's original intent and ensure the accuracy of the record.

(3) Copies of the motion shall be served on all parties.

(4) A motion for correction is not a prerequisite for seeking judicial review.

(5) A motion for correction shall not seek reconsideration of the decision.

(b) A CHO hearing officer shall grant or deny the motion.

- (1) If the motion is granted, the decision may be reissued with modifications, or the matter may be set for further proceedings to clarify the record.
- (2) If the motion is denied, a written order shall be issued and become part of the record.
- (c) Nothing in this section precludes the presiding officer or Director, on their own motion, from modifying the decision to correct a clerical error. Any modification shall be made before the decision's effective date.
- (d) Within five business days after correcting a clerical error in the decision, the CHO shall serve a copy of the correction on each party to the case.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.29. Judicial Reviews

- (a) Within 30 days after service of a copy of the written decision, any party to the action may file a petition for writ of mandate to seek review of the decision, in accordance with Code of Civil Procedure section 1094.5.
 - (1) The submission of a petition for writ of mandate does not stay any action, sanction, obligation, or consequence ordered by the written decision, including but not limited to corrective actions, the accrual of assessed penalties, revocations, or denials.
 - (2) Failure to file the petition within the 30-day timeframe precludes the party from contesting the validity of the decision or order in any subsequent judicial proceedings aimed at enforcing the decision.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.30. Reporting and Transcripts

- (a) Hearings shall be recorded electronically or transcribed by a certified court reporter. The record made by the CHO shall be the official record of the hearing.
 - (1) A party may, at its own expense, request that a verbatim transcript be made.
 - (2) The official recording or transcript of the hearing shall be added to the record.
- (b) If a party cites a portion of a transcript in a motion or briefing, the entire transcript of the case shall be filed with the CHO. Citations to the transcript shall indicate the transcript page number(s) and identify the speaker in the cited testimony.

- (c) In any case in which a party files a petition for judicial review, the CHO shall arrange for the preparation and filing of a transcript after the CHO receives full payment for the cost of preparing the transcript. Only if the superior court has permitted the party to proceed in forma pauperis shall the CHO prepare and file a transcript without charge.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Section 11400.20, Government Code.

Section 17063.31. Sanctions

- (a) Any order imposing a sanction shall be in writing and provide factual findings supporting the sanction. Before issuing sanctions, the presiding officer shall do both of the following:
- (1) Provide the party subject to the sanction notice and an opportunity to be heard.
 - (2) Obtain approval from the Director or the person acting in the capacity of the Director.
- (b) A person may face contempt sanctions for any of the reasons listed in Government Code section 11455.10 or for abusing the discovery process, which includes the following:
- (1) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials outside the scope of permissible discovery.
 - (2) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, oppression, or undue burden and expense.
 - (3) Failing to respond or submit to an authorized method of discovery.
 - (4) Making, without substantial justification, an unmeritorious objection to discovery.
 - (5) Disobeying an order to provide discovery.
 - (6) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.
 - (7) Failure to meet and confer for an informal resolution of a discovery dispute.
- (c) 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.
- (d) When the presiding officer has made a finding that a party or their representative has engaged in bad-faith actions or tactics that are frivolous or solely intended to

cause unnecessary delay, the presiding officer has the authority to order that party, their representative, or both, to reimburse the opposing party's reasonable expenses. The calculation of reasonable expenses shall be based on sworn testimony or a declaration detailing specific expenses incurred due to the bad-faith actions or tactics. An order to pay reasonable expenses is effective upon issuance.

(e) For the purposes of this section:

(1) "Actions or tactics" encompass, but are not limited to, failing to comply with a lawful order of the presiding officer or making or opposing motions.

(2) "Frivolous" means solely for the purpose of harassing an opposing party or totally and completely without merit.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20 and 11455.10 through 11455.30, Government Code.

Section 17063.32. Amicus Briefs

(a) A non-party with an interest in the outcome of the case may, by motion, request permission from the presiding officer to file an amicus brief. The presiding officer may also request the filing of an amicus brief from a non-party to address an issue of significance in the case. An amicus brief may only be filed with authorization from the presiding officer.

(b) A motion to file an amicus brief shall show good cause for filing the amicus brief, which shall be demonstrated by considering all of the following factors:

(1) Due process of law.

(2) Whether matters in the amicus brief will be helpful to the presiding officer.

(3) The interests of the public and public policy.

(4) The costs to the parties to answer the amicus brief.

(c) If the motion is granted, the presiding officer shall set deadlines for submission of the amicus brief and any party's answers to the brief.

Authority cited: Section 11400.20, Government Code; and Sections 14536 and 40502, Public Resources Code. Reference: Sections 11400.20 and 11440.50, Government Code.

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

(a) For violations of ~~subchapters 1, 6, 7 and 9 and sections 2010, 2015, 2020, 2025, 2030, 2035, 2040, 2045, 2050, 2055, 2060, 2065, 2125, 2130, 2400, 2405, 2415, 2420, 2425, 2430 of the Act or this chapter 5, division 2, title 14 of the California~~ for which the department assesses a civil penalty equal to or less than five thousand dollars (\$5000) pursuant to section 14591.1(a)(2) of the Public Resources Code of Regulations and Sections 14549.3, 14560.5(a), 14561(c), 14561(d), 14570, 14571.6 and 14572 of the Act, the Division shall issue, a Notice of Violation- shall be issued as a citation under section 17063.3 of chapter 1, division 7, title 14 of the California Code of Regulations, with the following additional requirements:

~~(1) The Notice of Violation shall be issued to a responsible party (i.e., the manager or other person in authority) at the site of the violation and shall contain the information in subsections (1) and (4) below. A copy shall be served upon the legal owner of the entity, (respondent), person on which the civil penalty is being imposed within ten (10) ninety (90) working days of the discovery of the violation by department staff.~~

~~(2) The Notice of Violation served upon the legal owner shall contain all of the following:~~

~~(1) A brief include a statement of the violation(s) alleged.~~

~~(2) A statement to the effect that the respondent has the right to a formal hearing, upon request, at which they may be represented by counsel.~~

~~(3) A statement that the respondent's right to an informal hearing will be deemed waived if respondent the person on which the civil penalty is being imposed fails to respond request in writing an informal hearing within 15 days from the date service of the Notice of Violation was received by the respondent, or respondent's agent for service, stating that he/she wishes to assert that right and that, in the event of such failure to respond, the Department may assess the maximum civil penalty permitted by law without a hearing person.~~

~~(3) (4) A The Notice of Violation shall include a sworn statement, signed by the Division inspector issuing notifying the respondent about the nature of the violation(s), verifying and the acts or omissions which form the basis of the violation(s).~~

~~(b) For civil penalties sought by the Department pursuant to Sections 14591.1, 14591.2, 14593, or 14594 of the Act, the Division shall provide for notice and a hearing regarding such penalties in accordance with the provisions of chapter 5 of the Administrative Procedure Act (Government Code Section 11500 et seq.); except that notice for violations of the Act, and the regulations enacted thereunder, enumerated in subdivision (a) shall be effected pursuant to the procedures in subdivision (a).~~

~~(c) Interest shall accrue from the date the payment was due.~~

(b) Interest on an unpaid civil penalty imposed pursuant to this section shall begin to accrue 30 days after the date the civil penalty was assessed and served. Interest shall be calculated at the rate earned on the Pooled Money Investment Account of the total amount past due.

Authority cited: Sections 14530.5(b) and 14536, Public Resources Code. Reference: Sections 14591.1, 14591.2, 14593 and 14594, Public Resources Code.

ARTICLE 5: Administrative Actions

Section 2130. Hearings

~~(a) Notice shall be given to the operator of record person against which adjudication proceedings will be brought pursuant to chapter 5 (Administrative Adjudication) of division 3 of title 2 of the Government Code, commencing with Section 11500, of the Division's department's intent to hold adjudication proceedings to consider any or all of the following:~~

~~(1) Revocation of a certificate pursuant to 14591.2(c)(1) of the Public Resources Code;~~

~~(2) Suspension of a certificate pursuant to 14591.2(c)(2) of the Public Resources Code;~~

~~(3) Nonrenewal of a certificate; or~~

~~(4) Imposition of civil penalties on the certificate holder greater than five thousand dollars (\$5,000) pursuant to section 14591.1(a)(1) of the Public Resources Code.~~

~~(5) Restitution of more than one thousand dollars (\$1,000) pursuant to section 14591.4(c)(1) of the Public Resources Code.~~

~~(b) Hearings concerning proceedings specified in subdivision (a) above shall be held in accordance with the provisions of chapter 5 (Administrative Adjudication) of division 3 of title 2 of the Government Code, commencing with Section 11500.~~

~~(c) Upon receiving notification of the Division's decision denying a certification application or notification to revoke a certificate issued to a dropoff or collection program or community service program, the operator shall have the~~ Notice shall be given to the person against which adjudication proceedings will be brought of their right to request a

an informal hearing in accordance with the Department of Resources Recycling and Recovery.

~~(1) The operator shall submit directly to the director of the Department of Resources Recycling and Recovery, within ten (10) calendar days of receipt of the notification from the Division, a written request~~CalRecycle Informal Hearing Rules (Title 14, California Code of Regulations, Sections 17063.1-17063.32) for a hearing. Such request shall include, at a minimum, all of the proceedings not specified under subdivision (a). This includes, but is not limited to, any of the following:

~~(A) The operator's name, mailing address, and daytime telephone number; and~~

~~(B) The requested certification category, as defined in section 2000(a)(5)~~

~~(1) Denial of these regulations, or current certification number; and~~

~~(C) The facility name and street address, if applicable; and~~

~~(D) The date on the notification from the Division and the stated reasons for denial or revocation; and~~

~~(E) A clear and concise statement of the basis for objecting to denial of the certification an original application, or revocation of the for a certificate.~~

~~(2) The director pursuant to section 14541(b) of the Department of Public Resources Recycling and Recovery shall schedule the hearing within twenty (20) working days of receipt of the written request for a hearing Code.~~

~~(3) The director shall make a determination to sustain or reverse the Division's denial of a certification application or revocation of a certificate issued to a dropoff or collection program or community service program based on the Division's preliminary review findings and any additional information submitted at the time of the hearing by the operator.~~

~~(4) The operator shall be notified of the determination by the director in writing within seven (7) working days from the date the hearing is conducted.~~

~~(2) Revocation of a probationary certification pursuant to section 14541(b) of the Public Resources Code.~~

~~(3) Restitution of one thousand dollars (\$1,000) or less pursuant to section 14591.4(c)(2) of the Public Resources Code.~~

~~(4) Civil penalties equal to or less than five thousand dollars (\$5,000) pursuant to section 14591.1(a)(2) of the Public Resources Code.~~

~~(5) Any other provision under the Act that provides for notice under article 10 (commencing with section 11445.10) of chapter 4.5 of part 1 of division 3 of title 2 of the Government Code.~~

Authority cited: Section 14536, Public Resources Code. Reference: Sections 14511.7, 14538, 14539, 14541 and 14591, Public Resources Code; and Sections 11500—11528, Government Code.

Subchapter 4.5: Dealers and Dealer Cooperatives

ARTICLE 5: Enforcement

Section 2385. Stewardship Plan Revocation; Enforcement Mechanisms

(a)(1) A dealer cooperative failing to comply with any applicable requirement of the Act or this chapter constitutes grounds for the department to require the dealer cooperative to take corrective action.

(2) Corrective action includes the following:

(A) Resubmittal of part or all of a previously approved stewardship plan, within 30 days of the date of written notification that includes a description of the failure or failures of the dealer cooperative to comply with any applicable requirement of the Act or this chapter by the department, demonstrating the corrections have been addressed. The department shall review and approve or disapprove a resubmitted stewardship plan, or part of a stewardship plan, in accordance with section 2376.

(B) Additional reporting of any of the components listed in section 2381 to verify compliance with any applicable provision of the Act or this chapter.

(b) A dealer cooperative failing to comply with a corrective action required pursuant to subdivision (a) or failing to implement the information specified in the dealer cooperative's approved stewardship plan pursuant to sections 2375.4 and 2375.6 constitutes grounds for the department to revoke part or all of the dealer cooperative's previously approved stewardship plan. Revoking the entirety of a previously approved stewardship plan shall include revoking the dealer cooperative registration number.

(c) Prior to the department's action pursuant to subdivision (b), the department shall issue a written notice to the dealer cooperative.

(d) A dealer cooperative may submit to the department a request for a hearing to contest the proposed action within 15 ~~30~~ days of receipt of the notice issued pursuant to subdivision (c). ~~The A hearing request under this section shall be submitted electronically in writing to an email address that the department specifies in the notice and shall state the basis for objecting to the department's proposed action. This requirement constitutes an express exception to title 14, California Code of Regulations, section 17063.4, which also allows mailing, and provides an alternative procedure requiring submission by email only. A conforming request for hearing causes a hearing to be undertaken. Failure to submit a timely hearing request under this subdivision may be deemed a waiver of the right to a hearing and the department shall proceed with the action specified in the written notice. The right to a hearing need not be deemed waived for an untimely hearing request if the dealer cooperative demonstrates good cause for the untimely hearing request.~~

(e) A hearing undertaken pursuant to subdivision (d) shall be conducted pursuant to the department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32). Article 10 (commencing with section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. The hearing shall be held before the Director or the Director's designee.

~~(f) The Director or the Director's designee shall issue a written decision within 60 days from the date the hearing is concluded.~~

Authority cited: Sections 14530.5 and 14578.5, Public Resources Code. Reference: Sections 14578 and 14578.5, Public Resources Code.

Section 2386. Penalties and Interest Charges

(a) A violation of this subchapter or sections 14578 and 14578.5 of the Act constitutes grounds for the department to issue a Notice of Violation. The Notice of Violation shall be issued to a manager or other person in authority at the site of the violation and shall contain the information specified in paragraphs (1) to (4). A copy shall be legally served through certified mail with proof of service upon the dealer cooperative within 10 working days. The Notice of Violation served upon the dealer cooperative shall contain all of the following statements:

(1) A statement of the violation(s) alleged.

(2) The right to a hearing conducted pursuant to the department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32). Article 10 (commencing with section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, upon request, at which the dealer cooperative may be represented by counsel.

(3) The right to a hearing shall be deemed waived if the dealer cooperative fails to respond within 15 30 days from the date service of the Notice of Violation was received by the dealer cooperative, or the dealer cooperative's agent for service of process, stating that it wishes to assert that right and that, in the event of such failure to respond, the department shall assess any civil penalty specified in the Notice of Violation. ~~The right to a hearing need not be deemed waived for an untimely hearing request if the dealer cooperative demonstrates good cause for the untimely hearing request.~~ The hearing request shall be submitted electronically in writing to an email address that the department specifies in the Notice of Violation. This requirement constitutes an express exception to title 14, California Code of Regulations, section 17063.4, which also allows mailing, and provides an alternative procedure requiring submission by email only.

(4) A statement, ~~signed by the department inspector issuing notifying the respondent about the nature of the violation(s), and verifying the acts or omissions that form the basis of the violation(s).~~

Authority cited: Sections 14530.5 and 14578.5, Public Resources Code. Reference: Sections 14578, 14578.5 and 14591.1, Public Resources Code.

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.

(a) A mobile unit shall operate in one or both of the following ways:

(1) The mobile unit arrives at the location where the mobile unit will redeem empty beverage containers at the beginning of the mobile unit's business day and vacates that location at the conclusion of the mobile unit's business day. This includes, but is not limited to, a mobile unit consisting of a reverse vending machine, whether staffed or not, a bag drop receptacle, whether staffed or not, and a mobile unit consisting of a staffed location where material is weighed by an attendant for immediate payment of the refund value.

(2) The mobile unit collects empty beverage containers at one or more consumer address(es).

(b) An anchor recycling center shall not operate a mobile unit that is not owned, leased, or rented by the anchor recycling center operator.

(c) A mobile unit shall operate in accordance with all of the following:

(1) Accept from consumers all types of beverage containers.

(2) Begin operation within 60 days of approval under section 2047(c)(1). Failure to begin operating within 60 days shall result in invalidation of the approval by the department.

(3) (A) Except as specified in subparagraph (B), operate in accordance with the hours and address(es) specified in the mobile unit application.

(B) The mobile unit shall notify the department electronically in writing 10 days before making a change to the hours and address(es) of operation specified in the mobile unit application. If the notice specifies a new address(es) of operation, the notice shall include formal acknowledgement, such as a use agreement or letter, signed by the property owner or property manager that permission is given to use the location(s) for the mobile unit.

(4) Deliver all collected empty beverage containers to its anchor recycling center at the conclusion of the business day during which the empty beverage containers were received.

(5) (A) Post the following signs on the mobile unit in a conspicuous location that can be easily seen by the public:

(i) A sign having a minimum size of two feet by two feet (576 square inches) informing the public that the mobile unit is approved by the state as a beverage container recycling mobile unit.

(ii) The signage described in sections 2500(e)(1) and (e)(2)(A).

(iii) A sign with the address of the anchor recycling center with a notice that consumers can receive immediate payment of the refund value for all beverage container types at that address. If the mobile unit charges a bag fee or a transaction fee to the consumer,

the sign shall specify that the anchor recycling center is staffed and the consumer is able to redeem empty beverage containers at the anchor recycling center without being charged a bag fee or transaction fee.

(iv) A duplicate of the certification sign provided by the department for the anchor recycling center. Alternatively, the mobile unit is authorized to make a duplicate or digital version of the certification sign provided by the department for the anchor recycling center available upon request instead of posting it.

(B) All signs required pursuant to subparagraph (A) shall be legible.

(6) Comply with the payment per count provisions specified in section 2535(b).

(7) If the mobile unit will collect empty beverage containers at the consumer's address, as described in section 2500.5(a)(2), comply with the consumer daily weight limits specified in section 2500.2(b).

(8) If the mobile unit will collect empty beverage containers at the consumer's address, as described in section 2500.5(a)(2), prepare and maintain records of an up-to-date list of all pickup locations that includes the first and last name of the consumer, the consumer's address, and the consumer's primary phone number.

(9) Not operate in a convenience zone in which a recycling center other than its anchor recycling center, a pilot project recycler, or a dealer cooperative operates.

(10) (A) Except as specified in subparagraph (B), only store or operate the mobile unit in a location specified in the mobile unit application. (B) The mobile unit shall notify the department electronically in writing 10 days before making a change to any storage or operation location of the mobile unit specified in the mobile unit application.

(11) Not operate for any of the following in addition to its anchor recycling center: another recycling center, a pilot project recycler, or a dealer cooperative.

(12) Comply with section 2500.2(i) relating to the security of the bag drop receptacle.

(d) A mobile unit that consists of a bag drop receptacle or reverse vending machine shall do all of the following:

(1) Comply with the consumer daily weight limits specified in section 2500.2(b).

(2) Comply with section 2500.2(d) relating to ineligible material, except that the ineligible material shall be delivered to the anchor recycling center instead of a processor.

(3) Provide the notice specified in section 2500.2(f).

(4) Post the signage specified in sections 2500.2(g)(1)(A), (B), (F), and (G) on the bag drop receptacle or reverse vending machine, subject to section 2500.2(g)(2), and comply with section 2500.2(h).

(e) A mobile unit that consists of a bag drop receptacle or reverse vending machine, or that collects empty beverage containers at the consumer's address, as described in section 2500.5(a)(2), is authorized to charge consumers for the fees specified in section 2500.2(c), subject to the requirements of that subdivision.

(f) A mobile unit shall not deliver empty beverage containers to a recycling center other than its anchor recycling center or to a processor.

(g) (1) Notwithstanding section 2516, regardless of the hours or address(es) of operation of a mobile unit, an anchor recycling center is eligible for handling fees for empty beverage containers collected by its mobile unit if the anchor recycling center is eligible for handling fees on its own.

(2) An anchor recycling center that is not eligible for handling fees on its own is not eligible for handling fees for empty beverage containers collected by its mobile unit.

(h) Within three of the anchor recycling center's business days following delivery of empty beverage containers from its mobile unit, an anchor recycling center shall inspect the empty beverage containers delivered to it by its mobile unit and, subsequent to that inspection, pay the refund value to the consumer. Alternatively, a mobile unit is authorized to inspect and pay the refund at the time the empty beverage containers are accepted.

(i) An anchor recycling center or mobile unit shall provide immediate access to the department to any storage, operation, or inspection location, or to the mobile unit, upon request. An anchor recycling center or mobile unit shall not store empty beverage container material at a residential address.

(j) (1) For a mobile unit at which containers are inspected and weighed at the time and location containers are delivered, the anchor recycling center shall prepare and maintain records for empty beverage containers accepted by its mobile unit in accordance with sections 2525(a), (b), and (d) to (k), inclusive.

(2) For a mobile unit that inspects and weighs containers at a time and location other than when and where the containers are delivered, the anchor recycling center shall prepare and maintain records for empty beverage containers accepted by its mobile unit in accordance with sections 2525(c) to (k), inclusive.

(3) For records prepared and maintained in accordance with section 2525, the certification number of the anchor recycling center shall be appended with an "M" (for example, "RC12345M") and the listed address shall be the address at which the mobile unit accepted the empty beverage containers.

(4) Except as specified in paragraph (5), the records for each mobile unit shall be maintained separately from the records for empty beverage containers redeemed at the anchor recycling center. (5) The anchor recycling center shall include the empty beverage containers accepted by its mobile unit each day in the daily summaries prepared by the anchor recycling center pursuant to section 2525(i).

(k) (1) A mobile unit or an anchor recycling center that fails to comply with any applicable requirement of the Act or this chapter constitutes grounds for the department to rescind the approval of the mobile unit.

(2) Within ~~30-15~~ days of the department notifying the operator of an anchor recycling center that the department intends to rescind the approval of the mobile unit due to the anchor recycling center or the mobile unit violating the Act or this chapter, the operator of the anchor recycling center is authorized to request an informal hearing conducted pursuant to ~~Article 10 (commencing with section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. An anchor recycling center operator's failure to respond within 30 days of the date the notification is sent by the department constitutes grounds for the right to a hearing to be deemed waived the department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1-17063.32).~~

(l) A mobile unit or an anchor recycling center that fails to comply with any applicable requirement of the Act or this chapter constitutes grounds for the department to revoke the anchor recycling center's certificate pursuant to section 2130. The department shall only proceed with revocation under this subdivision if it determines that rescinding the

approval of the mobile unit under subdivision (k) is inadequate considering the severity of the violation of the Act or this chapter.

Authority cited: Section 14536, Public Resources Code. Reference: Section 14538, Public Resources Code.

Division 7: Department of Resources Recycling and Recovery

Chapter 4: Resource Conservation Programs

ARTICLE 4: Recycled Content Newsprint

Section 17974. Penalties

(d) A Consumer of Newsprint may appeal the penalty assessed above in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1—17063.32). ~~to the full Board within ten (10) working days of receipt of the Notice of Penalty. This appeal must be made in writing and must be addressed to the Executive Director of the Board. The Executive Director shall calendar the appeal for hearing by the Board within thirty (30) days of receipt of the written notification by the Consumer of Newsprint.~~

Authority cited: Section 40502, Public Resources Code. Reference: Section 42790 and 42791, Public Resources Code.

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

(a) ~~If the Board~~Department denies an application~~refuses to issue or renew (denies)~~ a registration, or suspends, or revokes a waste tire hauler registration pursuant to Public Resources Code Section 42960, the waste tire hauler may ~~appeal that decision and request a hearing on that decision~~ in accordance with CalRecycle's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1—17063.32). ~~Government Code Sections 11505 to 11519. The request for a hearing must be in writing and received by the CIWMB Legal Office at P.O. Box 4025, Sacramento, CA 95812, within 30 days~~

~~after receipt of the denial, suspension, or revocation. The Board shall consider the original application, the reasons for denial, and any additional relevant information presented by the applicant. This decision shall be the final decision by the Board.~~

Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Sections 42951, 42952, 42955, 42960 and 42961, Public Resources Code.

Section 18464. Amount of Civil Penalties and Administrative Penalty Schedule

(b) ~~For a~~Administrative hearings held pursuant to Public Resources Code Sections 42960 and 42962 shall be held in accordance with CalRecycle's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1—17063.32), except that the hearing shall be scheduled within 14 days after receiving the Notice of Defense and the hearing shall be held within 90 days of the date of scheduling unless waived. Pursuant to Public Resources Code Section 42961.1, the Department may file a matter as or convert a matter to a formal hearing under Chapter 5 of the Administrative Procedure Act (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~, a person waives the right to a hearing when that person fails to submit to the Department a Notice of Defense pursuant to Government Code Section 11506 or CalRecycle Request for Hearing form within 15 days of service of the administrative complaint on that person.~~

Authority cited: Sections 40502, 42962, 42966 and 43020, Public Resources Code. Reference: Sections 42960 and 42962, Public Resources Code; and Section 11506, Government Code.

Section 18466. Procedure for Imposing Civil Penalties

(a) Civil penalties may be administratively imposed in accordance with the procedures outlined in CalRecycle's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32) ~~Title 14, California Code of Regulations, Sections 17063.1 to 17063.32~~ unless the matter was filed as or converted to a formal hearing under the Administrative Procedure Act at Chapter 5 of the Administrative Procedure Act (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government Code ~~Section 11505(c).~~

~~(b) The accusation or complaint and all accompanying documents may be served on the respondent by the following means:~~

~~(1) Personal service.~~

~~(2) Substitute service by using the same service procedures as described in Section 415.20 of the Code of Civil Procedure.~~

~~(3) Certified Mail: For respondents who are registered waste or used tire haulers, certified mail or registered mail if the letter containing the accusation or complaint and accompanying material is mailed, addressed to the respondent at the latest facility or mailing address(es) provided in the current year's waste tire hauler registration application (form CalRecycle 60) on file with the Department. Any address provided on the current year's waste tire hauler registration application may be used for service of process against a waste or used tire hauler, even if that hauler's actions occur while in the role of a waste tire generator or waste tire end-use facility. Proof of service of the accusation or complaint shall be the certified mail receipts or registered mail receipts proving the accusation or complaint and accompanying materials were sent to respondent by certified mail or registered mail. For respondents who are unregistered used or waste tire haulers, generators and end-use facilities that do not provide a current year's waste tire hauler registration application to the Department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at Section 11505(c) of the Government Code applies.~~

~~(c)(b)~~ Civil penalties may be imposed pursuant to the Public Resources Code Section 42962 in the discretion of the trier of fact in the administrative hearing or civil proceeding.

Authority cited: Sections 40502, 42962, 42966 and 43020, Public Resources Code.
Reference: Section 11500, Government Code; and Section 42962, Public Resources Code.

Chapter 8: Used Oil Recycling Program

ARTICLE 5: Used Oil Facilities

Section 18643.0. Registration and Certification of Used Oil Recycling Facilities and Rerefining Facilities

(e) If registration or certification is denied, CalRecycle will notify the applicant of the reason(s) for denial. If CalRecycle denies registration or certification, the facility may appeal that decision in accordance with CalRecycle's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1—17063.32).

~~within thirty (30) calendar days after the date of the denial notification. Any appeal received by CalRecycle after thirty (30) calendar days from the date of the denial notification shall be denied without consideration of the appeal.~~

~~(1) A written appeal shall include, at minimum, the following information:~~

~~(A) The facility's name and location;~~

~~(B) The type of certification or registration denied;~~

~~(C) The date on the notification from CalRecycle and the stated reasons for denial;~~

~~(D) A statement of the basis for objecting to the denial; and~~

~~(E) Any other relevant documentation in support of the appeal. CalRecycle may consider the reasons for denial and any additional relevant information presented by the applicant or CalRecycle staff.~~

~~(2) CalRecycle will notify the appealing party of its determination, in writing, within twenty (20) calendar days of its receipt of the appeal.~~

Authority cited: Sections 40502 and 48641, Public Resources Code. Reference: Sections 48624 and 48662, Public Resources Code.

Chapter 11: Product Stewardship

ARTICLE 3: Used Mattress Recovery and Recycling Program

Section 18971. Procedure for Imposing Civil Penalties

~~(a) Civil penalties may be administratively imposed in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32).~~

~~the procedures outlined in the Administrative Procedure Act at Article 10 of Chapter 4.5 (commencing with section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(b) The accusation or complaint and all accompanying documents may be served on the respondent by the following means:~~

~~(1) Personal service.~~

~~(2) Substitute service by using the same service procedures as described in section 415.20 of the Code of Civil Procedure.~~

~~(3) Certified Mail: For respondents who have submitted a mattress recycling plan, certified mail or registered mail if the letter containing the accusation or complaint and accompanying material is mailed, addressed to the respondent at the latest facility or mailing address(es) on file with the department. Proof of service of the accusation or complaint shall be the certified mail receipts or registered mail receipts proving the~~

~~accusation or complaint and accompanying materials were sent to respondent by certified mail or registered mail. For respondents who have not submitted or are not required to submit a mattress recycling plan to the department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at subdivision (c) of section 11505 of the Government Code applies.~~

~~(c)(b)~~ Civil penalties may be imposed pursuant to subdivision (a) of section 42993.1 of the Public Resources Code.

Authority cited: Sections 40401 and 40502, Public Resources Code. Reference: Sections 42985, 42986, 42993, 42993.1, 42993.2 and 42993.3, Public Resources Code; and Section 11500, Government Code.

ARTICLE 4: Pharmaceutical and Sharps Waste Stewardship Program

Section 18975.1. Procedure for Imposing Administrative Civil Penalties

~~(b) The department shall commence an action to impose administrative civil penalties by serving a statement of charges to the jurisdiction, person, and/or entity in accordance with California Code of Regulations, Title 14, Section 17063.3. The statement of charges shall describe an accusation upon the respondent that includes a notice informing the respondent of their right to a hearing. The accusation shall state the legal and factual basis for the imposition of penalties, including a description of how the department applied the criteria in Section 18975(c).~~

~~(c) A hearing required under this article shall be conducted in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32).~~

~~The accusation and all accompanying documents shall be served on the respondent by one of the following means:~~

- ~~(1) Personal service;~~
- ~~(2) Substitute service by using the same service procedures as described in Section 415.20 of the Code of Civil Procedure;~~
- ~~(3) Certified Mail or registered mail; or~~
- ~~(4) Electronically, with the consent of the respondent.~~

~~(d) A request for hearing to contest the proposed action shall be submitted to the department within thirty (30) days of receipt of the accusation. The hearing request shall be in writing and shall state the basis for objecting to the department's action. Upon a failure to submit a timely hearing request under this subdivision, the respondent shall be deemed to have waived its right to hearing and the department shall issue a penalty~~

~~order to the respondent requiring payment of penalties at the levels described in the accusation.~~

~~(e) The hearing shall be held before the Director of the Department of Resources Recycling and Recovery. A party shall be afforded the opportunity to present evidence and testimony on all relevant issues. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.~~

~~(f) The Director of the Department of Resources Recycling and Recovery shall issue a written decision within sixty (60) days from the date the hearing is concluded.~~

Authority cited: Sections 40401, 42031.2 and 40502, Public Resources Code.

Reference: Sections 42030, 42035, 42035.2, 42035.4, 42035.6 and 42035.8, Public Resources Code.

Section 18975.2. Procedure for Stewardship Plan Revocation, Resubmittal, or Additional Compliance Reporting

(c) The notice described in subdivision (b) shall comply with California Code of Regulations, Title 14, Section 17063.3.

~~be served on the respondent by one of the following means:~~

~~(1) Personal service;~~

~~(2) Substitute service by using the same service procedures as described in Section 415.20 of the Code of Civil Procedure;~~

~~(3) Certified Mail or registered mail; or~~

~~(4) Electronically, with the consent of the respondent.~~

(d) A respondent may submit to the department a request for hearing in accordance with California Code of Regulations, Title 14, Section 17063.4.~~to contest the proposed action within thirty (30) days of receipt of the notice issued pursuant to subdivision (b). The hearing request shall be in writing and shall state the basis for objecting to the department's action.~~ Upon a failure to submit a timely hearing request ~~under this subdivision~~, the respondent shall be deemed to have waived its right to hearing and the department may revoke an approved stewardship plan, require resubmittal of an approved stewardship plan, require additional compliance reporting, or all three.

(e) The hearing shall be conducted in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32).

~~The hearing shall be held before the Director of the Department of Resources Recycling and Recovery. A party shall be afforded the opportunity to present evidence and testimony on all relevant issues. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.~~

~~(f) The Director of the Department of Resources Recycling and Recovery shall issue a written decision within sixty (60) days from the date the hearing is concluded.~~

Authority cited: Sections 40401, 42031.2 and 40502, Public Resources Code.

Reference: Sections 42030, 42032, 42033.2, 42035, 42035.2, 42035.4, 42035.6 and 42035.8, Public Resources Code.

Chapter 12: Short-Lived Climate Pollutants

ARTICLE 16: Administrative Civil Penalties

Section 18997.5. Department Procedure for Imposing Administrative Civil Penalties

~~(a) The Department shall commence an action to impose administrative civil penalties by serving a statement of charges to the jurisdiction, person, and/or entity in accordance with California Code of Regulations, Title 14, Section 17063.3.~~

~~an accusation on a jurisdiction, person and/or entity, and a notice informing the jurisdiction, person, and/or entity of their right to a hearing conducted pursuant to Section 18997.6.~~

~~(b) The accusation and all accompanying documents may be served on the respondent(s) by one of the following means:~~

~~(1) Personal service;~~

~~(2) Substitute service by using the same service procedures as described in Section 415.20 of the Code of Civil Procedure;~~

~~(3) Certified Mail or registered mail; or~~

~~(4) Electronically, with the consent of the respondent(s).~~

~~(c) Upon receipt of the accusation, the respondent shall file a request for hearing with the director of the Department within 15 days or the respondent will be deemed to have waived its right to a hearing.~~

~~(d) The Department shall schedule a hearing within 30 days of receipt of a request for hearing that complies with the requirements of this section.~~

~~(e) The hearing shall be held before the director of the Department, or the director's designee, within 90 days of the scheduling date.~~

~~(f) If the respondent(s) waive(s) the right to a hearing, the Department shall issue a penalty order in the amount described in the accusation.~~

~~(g) The director of the Department, or the director's designee, shall issue a written decision within 60 days of the conclusion of the hearing.~~

Authority cited: Sections 40502, 43020, 43021 and 42652.5, Public Resources Code.
Reference: Section 42652.5, Public Resources Code; and Section 39730.6, Health and Safety Code.

Section 18997.6. Department Procedures for Hearings and Penalty Orders

(a) A hearing required under this chapter shall be conducted in accordance with the Department's hearing regulations (Title 14, California Code of Regulations, Sections 17063.1–17063.32).

~~by the director of the Department, or the director's designee, in accordance with the informal hearing requirements specified in Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(b) A penalty order issued under Section 18997.5 shall become effective and final upon issuance thereof, and payment shall be due within 30 days of issuance, unless otherwise ordered by the director or the director's designee. A penalty order may be served by any method described in Section 18997.5(b).~~

Authority cited: Sections 40502, 43020, 43021 and 42652.5, Public Resources Code.
Reference: Section 42652.5, Public Resources Code; and Section 39730.6, Health and Safety Code.