

Comment Code	Commenter Name	Comment	CalRecycle's Response
I-1-1	Leonard Lang	Currently CalRecycle is in the process of rulemaking for an item that's been on their rulemaking calendar for a decade. They are adopting regulations covering the Informal Hearing that's authorized by Government Code Section: 11445. This authority is embedded in many, if not all, programs administrated by the department. The Informal Hearing should be better titled "Cheap Injustice". It's not known why this system was created. To learn why, we'd need to see the original bill and all the analyses that were created in the legislative process. It's time to find out. The Informal Hearing is an adjudication process which ignores constitutional protections. Investigative powers, enforcement powers and the adjudication function are all in-house. There is no independent judge to protect the rights of the accused. This creates an opportunity for deference by the department to influence the process. It also lacks evidentiary standards of the court system. Because of these issues and more, the Informal Hearing has been responsible for eliminating an unacceptable amount of recyclers over the decades of its use. There are no standards imposed on the adjudicator. Historically it's mid-level bureaucrats who lack basic qualifications. CalRecycle now uses a dedicated attorney for the process. This has resulted in some enforcement allegations by CalRecycle being overturned because alleged violations were contrary to the regulations and therefore hard to ignore by the adjudicator. But it's still not a fair environment. With this rulemaking package the department is attempting to present a more fair appearance. There adopting the right to discovery. Prior to a hearing a CalRecycle attorney yelled at me that the respondent I represented (accused) had no right to discovery. I had simply asked that the branch chief who signed a recyclers revocation letter be available to testify about his decision to sign the letter. This is the first opportunity that CRV recyclers and processors have had an opportunity to ensure a more favorable process. According to background documents, local jurisdictions are subject to the same Informal Hearing. This is possibly only a token gesture to make the process look fairer but the industries regulated must take advantage of the opportunity. Historically, the informal hearing has been the responsibility of the Director. If a director conducted an informal hearing they would have the opportunity to evaluate the work and competence of their subordinates. They would also be able to evaluate the effectiveness of their interactions with certified operators. The problem arises when they're allowed to delegate to any subordinate regardless of qualifications. While under the Department of Conservation, designees included a Geologist, IT manager and an oil and gas engineer. In the Department of Agriculture hearings were conducted by a produce inspector. Under the direction of CalRecycle staff attorneys were used.	Comment rejected. To the extent that the comment can be construed as recommending a change to the name of the regulations to "Cheap Justice", the comment is rejected because the currently proposed name "CalRecycle Informal Hearing Rules" is consistent with the goals of unifying informal hearing across as many of CalRecycle's programs as possible. Other than that putative recommendation, commenter offers no recommendations in this comment to changes to the regulations or comments about the procedures used to proposed or adopt the regulations; consequently, CalRecycle rejects this comment.
I-1-2	Leonard Lang	CalRecycle recognized issues with the informal hearing process. The adoption of these regulations has been on the Rule Making Calendar for a dozen years or more. The contact was the departments original chief legal counsel. In adopting these regulations we now see the apparent concerns and find a new entity being proposed, the CalRecycle Hearing Office. Nowhere is the identity of the staff positions or their qualifications found in the proposed amendments. Eligible staff and their qualifications should be identified to ensure fairness and transparency in the hearing process.	Comment rejected. The proposed rules began being drafted in spring 2024 and were filed with the Office of Administrative Law less than 18 months later. Their drafting included a thorough review of the different hearing rules utilized by a variety of different California agencies and were based on the experience of an attorney who presided over hundreds of Chapter 5 (formal) APA hearings. CalRecycle is excited to offer parties a clear and transparent set of rules to govern its internal hearings, based on current best practices.
I-1-3	Leonard Lang	In adopting these regulations it appears that CalRecycle is eliminating clear and concise terms for different programs to make them applicable to many programs which creates confusion. A respondent should remain a respondent.	Comment rejected. Commenter failed to identify any specific terms that were eliminated and caused confusion. The term "respondent" is included in the regulations' definition section under a definition that matches its current meaning. The definitions section cannot define a term as the same word as the term being defined; it must explain the meaning of the term.

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I-1-4	Leonard Lang	ARTICLE 6: Hearing Office In general, this section this misidentifies Authority and references, lacks Consistency and necessity.	Comment rejected. There is no Government Code section 11445. Commenter may be attempting to cite Article 10. This rulemaking seeks to create a bespoke set of hearing procedures so CalRecycle does not need to rely on the sections of Article 10, which are discretionary provisions for agencies without their own hearing procedures for informal hearings. (See Patterson Flying Service v. Dept. of Pesticide Reg. (2008) 161 Cal.App.4th 411, 423.) CalRecycle relied on three main authorities in the proposed rulemaking: •Government Code section 11400.20, subdivision (a), which allows an agency to adopt permanent regulations on an informal administrative adjudication; •Public Resources Code section 14536, subdivision (b)(1), which authorizes CalRecycle to adopt regulations to implement portions of the Beverage Container Recycling and Litter Reduction Act; and •Public Resources Code section 40502, subdivision (a), which authorizes CalRecycle to adopt rules and regulations to carry out the Integrated Waste Management Act (Pub. Resources Code, § 40000 et seq.). Commenter's belief that the language "the board" does not include CalRecycle is incorrect. Public Resources Code section 40400 provides: "Any reference in any law or regulation to the State Solid Waste Management Board, the California Waste Management Board, or the California Integrated Waste Management Board shall hereafter apply to the Department of Resources Recycling and Recovery." CalRecycle cannot place regulations in the Government Code, as that is reserved for the Legislature. Agency regulations are placed in the California Code of Regulations. The portion of the Government Code cited by commenter applies to agency investigations (Gov. Code, § 11180 et seq.), not apply to APA hearings (Gov. Code, § 11400 et seq.).
I-1-5	Leonard Lang	Section 17063.1 Overall the section is confusing as it cites Formal Hearing codes. The authority cited from both Government Code and Public Resources Code do not appear to give authority. The section should be rewritten and given an appropriate section number.	Comment rejected. The proposed regulation cites the formal hearing codes in the section that specifies which parts of the APA are inapplicable in CalRecycle's informal hearings. The language "This article does not govern formal hearings conducted under Chapter 5 of the Administrative Procedure Act (Government Code sections 11500 through 11530)" does not raise a likelihood of confusion for a reasonable person.
I-1-6	Leonard Lang	Section 17063.2. Definitions (2) Case. I find the section very confusing. It refers to a Department Decision but it identifies no process or reason for the decision or the reasons that it's applicable to the Informal Hearing Process. Recyclers receive accusations and that term is not used. Definitions should be applicable to the specific program being addressed.	Comment rejected. The term "case" is common in legal proceedings. Here, the term defines the temporal scope of the matter present before the hearing office and helps unrepresented parties understand that the hearing is part, but not all, of the case. It is not possible to articulate the process or reason for every potential CalRecycle decision within the definition of the word "case." Not all cases are premised on accusations, so it would be incorrect to define "case" in that manner. This term "case" applies to all matters before the Hearing Office. Creating separate definitions for "case" in each specific program would create confusion and add unnecessary complexity to the rules.
I-1-7	Leonard Lang	(6) Discovery. This term is beneficial because it references evidence which heretofore could be undisclosed to the respondent.	Comment rejected. No changes or alterations proposed.

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I-1-8	Leonard Lang	(8) Ex Parte Communications. We agree with the need to define this.	Comments rejected. First, Commenter offers no recommendation on the definition but agrees with its necessity to be defined. Second, ex parte communications are prohibited under the APA (Gov. Code, §§ 11430.10–11430.80.) The APA's prohibitions apply to parties, representatives, and any other interested persons, regardless of whether they are attorneys. The proposed rule accurately captures this prohibition. Ex parte communication rules do not apply between the presiding officer and the agency head because the Director is the individual who issues the decision. (Gov. Code, § 11430.80, subd. (b).)
I-1-9	Leonard Lang	(10) Hearing. This definition includes the term case which I've already objected to. It also refers to the merits of the case but doesn't explain what constitutes them. The section should be rewritten or eliminated.	Comment rejected. The definition of hearing helps explain to unrepresented respondents that the hearing is where they present the merits of their case. This definition uses concise, plain language to help individuals understand that a hearing is where they argue the validity of their factual and legal claims.
I-1-10	Leonard Lang	(14) Record. For clarity it would be best to remove CHO and replace it with Hearing Officer since he is ultimately responsible for the decisions for allowing evidence.	Comment rejected. The record includes materials that are submitted prior to assignment of a hearing officer. A record includes more than just the exhibits offered at a hearing, as explained in the definition. Should there be a change in the presiding officer or should another hearing officer assist with the case, using the singular term "hearing officer" would be incorrect. The CHO, as defined in the section, includes all hearing officers employed by CalRecycle, making it the most inclusive and correct term to use.
I-1-11	Leonard Lang	(15) Relevant evidence. This definition is concerning because it does not reference evidentiary hearing statutory authority. Just as concerning is that there is no guarantee that the CHO or Hearing Officer have the qualifications to make the determinations. The section must require reference to statutory rules of evidence.	Comment rejected. Commenter misunderstands the evidentiary standards that apply in APA hearings. Even in formal hearing, the presiding officer is not bound by the California Evidence Code. (Gov. Code, § 11513.) The Legislature determined that any relevant evidence that a reasonable person would find reliable in a serious matter may be considered. (Ibid.) Thus, the section does not cite the California Evidence Code because that code is not binding. Nevertheless, the proposed section mirrors the Evidence Code's definition of "relevant evidence" in plain language. (Compare Evid. Code, § 210 with proposed rule § 17063.2, subd. (a)(15).)
I-1-12	Leonard Lang	(16) Representative. The section lacks clarity because of the multiple use of the word party. It should be corrected.	Comment rejected. The word "party," as defined by the Legislature in Government Code section 11405.60, includes both the agency taking the action and the person to which the action is directed (the respondent). All parties are permitted to have a representative, so it is proper to use the term "party" in the definition.
I-1-13	Leonard Lang	(17) Respondent. For clarity this term should be used anywhere in actions concerning enforcement of the Beverage Container Recycling Act, not the term party for purposes of consistency and clarity.	Comment rejected. The word "party," as explained above, is used to refer to the participants in CalRecycle informal hearings because "respondents" are not the only participants. Party is a common term that the Legislature defined and used throughout the APA (Gov. Code, § 11405.60), making it proper to use in these regulations governing informal APA hearing procedures.

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I-1-14	Leonard Lang	Section 17063.3. Pleadings We agree with the use of the term respondent in this section. (b) this section lacks clarity because it's attempting to lump together the various granting of rights and certificates from different programs. For clarity a section should be written for each program using the definitions of that program. Applicants will not be familiar with all the terms of other programs that are not involved with. Clarity demands they be separated.	Comment rejected. Grouping pleading standards for denials and disciplines is a concise and common-sense practice utilized in formal APA hearings. (See Gov. Code, §§ 11503, 11504.) These regulations attempted to mirror the language drafted by the Legislature for formal hearings while ensuring all relevant programs were included. Having different pleading standards for every program would create confusion and needless complexity, which this rulemaking package labored to remove.
I-1-15	Leonard Lang	(2) we disagree with this section as written. The burden of proof as to the fitness and qualifications of applicants should be the departments based on applicable statutes and regulations. Historically, the department has used this position to demand things not in regulation. Decisions of fitness and qualifications should be based strictly on the regulations. Frequently, the department demands applicants sign agreements which are not authorized by the regulations.	Comment rejected. Commenter is incorrect as a matter of law. Respondents have the burden of proof in denial cases; the agency has the burden of proof in discipline cases. (Martin v. Alcoholic Beverage Control Appeals Bd. of Cal. (1959) 52 Cal.2d 259, 265 ["Furthermore, the burden of proof may properly be placed upon the applicant in application proceedings but not in revocation proceedings."].)
I-1-16	Leonard Lang	Section 17063.4 Notice of Defense & notice of hearings (b) (1) I suggest this be changed to 20 days to allow a respondent to request a hearing. It's been my experience that by the time a certified operator receives notice of the accusation, is able to comprehend the significance and to obtain representation 20 days is more fair.	Comments rejected. The 15-day deadline to file a Notice of Defense in proposed rule section 17063.4 is consistent with the timeline the Legislature selected for use in formal APA matters, where the amount of process due is typically higher. (Gov. Code, § 11506.) This timeline for filing a Notice of Defense has been utilized for decades across thousands of different cases and respondents in Chapter 5 hearings without any evidence that it denies the right to request a hearing or poses an undue burden. The selection of the 15-day deadline allows CalRecycle to use a time-tested, legislatively approved period for requesting a hearing that matches the same deadline used in CalRecycle's hearings under Chapter 5 of the APA, ensuring consistency across cases. Proposed rule section 17063.4, subdivision (b) sets the deadline for a respondent to file a Notice of Defense with CalRecycle. It does not require a respondent to construct a fully developed case, collect all applicable evidence, or contact all potential witnesses before that date. Rather, the section merely requires that the respondent let CalRecycle know that they would like a hearing, along with a brief statement about the reason they are contesting the agency's finding. Just as the pleading requirements in proposed rule section 17063.3 require CalRecycle to provide enough information upon which the respondent can prepare a defense, the Notice of Hearing section requires that the respondent provide CalRecycle with the reason for the hearing request. Sharing what facts and law are at issue helps both parties prepare for hearing and may result in voluntary settlement discussions. If, after gathering more evidence, either party decides that they no longer wish to go to hearing, the proposed rules offer a mechanism by which they can withdraw the hearing request. (See proposed rule § 17063.24.) As a whole, this structure facilitates speedy access to a due process hearing and an exchange of information that benefits all parties.

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I-1-17	Leonard Lang	(e) this section allows the department to schedule a hearing within 90 days of the request. Often, the Department forces closure of the recycling center. This places the respondent in an untenable position. Their income is cut off, business expenses such as leases, insurance continue. Employees are thrown out of work and customer goodwill is lost. The original regulations and the hearing to be scheduled with in 20 days. That regulation went through a change of numbers. It's my opinion that in the confusion the department took advantage and changed the policy to only require the hearing to be scheduled within 20 days. They then took advantage of the situation by delaying the schedules hearing at the convenience of staff and a hearing designee. Justice delayed is justice denied. The hearing should be offered within 20 days of the appeal.	Comment rejected. Prior regulations mandated that a hearing be scheduled within 20 days of the request for hearing, without guidance on when the hearing should begin. This regulation accomplishes something different: it states that the hearing is to be scheduled to begin within 90 days after CalRecycle receives the Notice of Defense unless the parties agree to a delay or there is good cause to continue beyond 90 days. In doing so, this regulation protects the parties' rights to a prompt hearing, rather than just prompt scheduling. Parties are free to agree on a hearing date within 20 days of the request for hearing, as that would fall within the 90-day window for hearings to begin.
I-1-18	Leonard Lang	The authority cited for this section includes PRC 14536 identifies specific sections of the Act which do not seem to apply to this section. Also, PRC Section 40502 refers to the CA Integrated Waste Management Board which no longer exists. PRC section 40501 applies to the Department and should be used instead. This comment should apply to all sections that use these 2 sections as authority.	Comment rejected. There is no Government Code section 11445. Commenter may be attempting to cite Article 10. This rulemaking seeks to create a bespoke set of hearing procedures so CalRecycle does not need to rely on the sections of Article 10, which are discretionary provisions for agencies without their own hearing procedures for informal hearings. (See Patterson Flying Service v. Dept. of Pesticide Reg. (2008) 161 Cal.App.4th 411, 423.) CalRecycle relied on three main authorities in the proposed rulemaking: •Government Code section 11400.20, subdivision (a), which allows an agency to adopt permanent regulations on an informal administrative adjudication; •Public Resources Code section 14536, subdivision (b)(1), which authorizes CalRecycle to adopt regulations to implement portions of the Beverage Container Recycling and Litter Reduction Act; and •Public Resources Code section 40502, subdivision (a), which authorizes CalRecycle to adopt rules and regulations to carry out the Integrated Waste Management Act (Pub. Resources Code, § 40000 et seq.). Commenter's belief that the language "the board" does not include CalRecycle is incorrect. Public Resources Code section 40400 provides: "Any reference in any law or regulation to the State Solid Waste Management Board, the California Waste Management Board, or the California Integrated Waste Management Board shall hereafter apply to the Department of Resources Recycling and Recovery." CalRecycle cannot place regulations in the Government Code, as that is reserved for the Legislature. Agency regulations are placed in the California Code of Regulations. The portion of the Government Code cited by commenter applies to agency investigations (Gov. Code, § 11180 et seq.), not apply to APA hearings (Gov. Code, § 11400 et seq.).

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I-1-19	Leonard Lang	Section 17063.6. Since the respondent is prohibited from challenging the presiding officer, standards of competence should be adopted for the appointment. Those standards should be training on both the statute and regulations of the program involved and testing of those laws to a high proficiency, I recommend a 90% plus score be required. Attorneys must pass the bar exam to be eligible to become a judge or adjudicator. The hearing officer should also be subject to examination since they serve\ in the same function.	Comment rejected. The proposed rules clearly articulate standards for the adjudicators. They mandate compliance with the APA, including the separation of functions and disqualification requirements. (See Gov. Code, §§ 11425.30, 11425.40.) Hearing officers in the CalRecycle Hearing Office are employed by the State of California in the Attorney IV classification. This requires not only admission to practice law in California, but at least six years of licensed practice to perform independent work at an advanced level. CalRecycle declines to list the identities of current staff in its regulations, as that would not add clarity or value.
I-1-20	Leonard Lang	Section 17063.7. Ex Parte Communications This Section places excessive burden on someone who may represent a respondent. There is no requirement for them to be an attorney who is trained to understand the issue. I was once charged with this violation because I sought to seek a change in date for the hearing from the Director. I was given a letter accusing me of the violation. That letter had no purpose. Interviewing me in creating it was a waste of resources. What is not included but should be is that there should be no communication between the hearing officer and the director prior to the decision.	Comments rejected. First, Commenter offers no recommendation on the definition but agrees with its necessity to be defined. Second, ex parte communications are prohibited under the APA (Gov. Code, §§ 11430.10–11430.80.) The APA's prohibitions apply to parties, representatives, and any other interested persons, regardless of whether they are attorneys. The proposed rule accurately captures this prohibition. Ex parte communication rules do not apply between the presiding officer and the agency head because the Director is the individual who issues the decision. (Gov. Code, § 11430.80, subd. (b).)
I-1-21	Leonard Lang	Section 17063.9. Interpreters at Informal Hearings CalRecycle provides bilingual staff to accommodate the certification process to include the training and testing requirements. Therefore they should be responsible for the interpreters. At a minimum, if the respondent prevails the department should pay. Only in the case of default would the cost be appropriate.	Comment rejected. Although CalRecycle is not on the list of agencies required to provide language assistance in administrative hearings (Gov. Code, § 11435.15), CalRecycle elected to impose this requirement on its hearings to ensure access for the diverse communities it serves. Consistent with the Government Code, CalRecycle will pay the cost of interpretation services unless there is an equitable reason to shift that cost. (Gov. Code, § 11435.25, subd. (b).) Those factors include the party's ability to pay and instances where the interpretation cost was unnecessary and avoidable. The latter includes defaults and late cancelations, as these instances result in public funds being used to pay for interpretation services that were not needed and could have been avoided.
I-1-22	Leonard Lang	Section 17063.13. Discovery Providing discovery is long overdue. In the past I fear exculpatory evidence has been denied because the informal hearing fails to provide for it. In one hearing, a staff attorney yelled at me declaring there was no right to discovery. I had simply requested that the branch chief who signed the Notice of Accusation be available to testify about his actions.	CalRecycle appreciates the commenters' participation in the rulemaking and approval of the rule regarding discovery. Nevertheless, CalRecycle must reject the comments because they do not propose any changes to the proposed rules.

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I-1-23	Leonard Lang	Discovery should be mandatory and provided without a written request. The department should also not be allowed 30 days to provide it. If they make the accusation they should know it needs to be provided immediately on appeal. As written, it places excessive burden on the respondent to continue to pay expenses if CalRecycle is given 30 days. The time constraints for a hearing were originally to be held within 20 days. I obtained a copy of the original statement of reasons which supported this.	Comment rejected. CalRecycle created a discovery provision that provides efficient and accessible access to pertinent case information before the hearing. Both sides must provide the proposed exhibits and the names and statements from proposed witnesses upon request. Requests must be made at least 30 days before hearing and relevant materials must be provided within 14 days of the discovery request. This allows the responding party adequate time to compile their exhibits and create a witness list, while giving the requesting party at least 16 days to review the discoverable information in preparation for the hearing. Parties are also free to collaborate on exchanging materials that exceed what is listed in the discovery section. It would not be fair to unrepresented respondents to require a faster timeline to assemble and send the listed discovery materials. Having the exchange take place less than two weeks before the hearing would not give the requesting party time to review the supplied materials and prepare counterarguments, or to file a motion to compel in the event of non-compliance. Taken together, the proposed regulation's timelines balance the needs of both parties while maintaining an expeditious hearing process.
I-1-24	Leonard Lang	Section 17063.18. Public Observation of hearings We agree and support the public’s right to observe the hearing process.	CalRecycle appreciates the commenter's approval of the rule regarding public access. Nevertheless, CalRecycle must reject the comment because it does not propose any changes or alterations to the proposed rules.
I-1-25	Leonard Lang	Section 17063.19. Hearing Procedures We agree and support the use of videoconferencing to reduce the costs and burden on all participants.	CalRecycle appreciates the commenter's approval of the rule regarding videoconference hearings. Nevertheless, CalRecycle must reject the comment because it does not propose any changes or alterations to the proposed rules.
I-1-26	Leonard Lang	Section 17063.20. Written Cases We agree that it may be beneficial to conduct the hearing through written submissions. But this should only be allowed with the permission of the respondent. The Department can't be trusted to be the sole determiner of this method. Rights of the respondent must not be compromised.	Comment rejected. Written-only cases will only take place where specified in statute or where the presiding officer approves a request. CalRecycle believes requests will typically involve a stipulation by both parties and take place in cases without factual disputes that necessitate credibility findings. Nevertheless, each party has the opportunity to submit a request for a written case and respond to requests made by the opposing party. The hearing officer will determine, based on this information, whether there is good cause for a written-only case, which includes whether it will adequately protect the rights of all parties and satisfy the APA's requirements.
I-1-27	Leonard Lang	Section 17063.21. Presentation of Evidence (b) we oppose this section because it reduces the standards and the protections of evidentiary law. This is especially burdensome and threatening when the decision is based upon the preponderance of evidence.	Comment rejected. Commenter misunderstands what evidentiary rules apply to APA hearings. APA hearings are not bound by the California Rules of Evidence. Even in formal cases, any relevant evidence that a reasonable person would find reliable in a serious matter may be considered. (Gov. Code, § 11513.) Subdivision (b) mirrors the language used about evidence admissibility in formal APA hearings while using plain language. (See <i>ibid.</i>) In doing so, the proposed rule is more protective of parties' rights than the current absence of evidentiary standards and rules in informal hearings.
I-1-28	Leonard Lang	(f) we object to this section as it can permit inaccurate judgment by a hearing officer who may have no qualifications to make these judgments and protect the rights of the respondent. This is a serious weakness of the Informal Hearing.	Comment rejected. Commenter earlier requested application of the California Rules of Evidence. This rule mirrors California Code of Evidence section 412. The Department's hearing officers are licensed attorneys with experience in conducting administrative adjudications, fully capable of recognizing the strength and reliability of evidence when presiding over hearings.

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I-1-29	Leonard Lang	Section 17063.27. Decisions Historically the informal hearing decision has been required within 30 days of the hearing’s conclusion. Consistently, hearing officers always request additional time. They should hold to the existing standard of 30 days so as not to impose excessive burden and costs on respondents. They know what the job is and they should be expected to do it within 30 days.	Comment rejected. The timeline of 60 days was selected in accordance with existing regulations. (See Cal. Code Regs., §§ 2385, subd. (f); 18975.1, subd. (f); 18975.2, subd. (f); 18997.5, subd. (g).) The 60-day timeline begins when the case is submitted, which may be at the end of a hearing or after all post-hearing closing briefing has been submitted. Given the scientific and technical nature of many CalRecycle cases, it was important to provide adequate time to review the legal arguments and consider all admitted evidence. The timeline sets a maximum period. In simpler cases, decisions may be issued in 30 days or less.
I-1-30	Leonard Lang	(c) It’s preferred that all Informal Hearing decisions be published to provide transparency and educate certified operators as to the problems and risks they face in volunteering to serve the state and the public.	Comment rejected. The section of the proposed regulations cited by the commenter is about precedential decisions, which have specific requirements under the APA. (See Gov. Code, § 11425.60.) CalRecycle already publishes decisions and enforcement orders on its website for public access. (See, e.g., https://www2.calrecycle.ca.gov/Docs/EnforcementOrder/, https://www2.calrecycle.ca.gov/BevContainer/EnforcementOrders.)
I-1-31	Leonard Lang	Section 17063.29. Judicial Reviews We agree with and support the ability to seek judicial review.	CalRecycle appreciates the commenter's approval of the rule regarding judicial review. Nevertheless, CalRecycle must reject the comment because it does not propose any changes or alterations to the proposed rules.
I-1-32	Leonard Lang	Section 17063.30. Reporting & Transcripts This section should be amended to state that the hearings shall be recorded AND transcribed by a certified court reporter. It’s been my experience that court reporters record and transcribe to ensure accuracy. A recording is excessively burdensome for a respondent. This is happened to me in the past. The department will make things difficult whenever they can.	Comment rejected. In an administrative hearing, there can only be one official record of the hearing proceeding. If a court reporter elects to record a hearing upon which to rely upon in making a transcript, that is permissible. Unless the parties stipulate to an electronic recording in lieu of a court reporter transcript, the transcript is the official record. Conducting hearings over Teams or Zoom allows for audio recordings to be created at no cost to either party. Requiring CalRecycle to purchase a transcript when unneeded would not be a responsible use of taxpayer funds. Traditionally, court reporters are independent contractors with different rules about transcript costs and to whom purchased transcripts may be shared. If a respondent requests a transcript that CalRecycle did not need, the respondent will be responsible for costs they have voluntarily incurred.
I-1-33	Leonard Lang	Also, the department should be required to obtain the first copy of the transcription as a part of the hearing record. That reduces burden and cost should the respondent find it necessary to obtain one.	Comment rejected. In an administrative hearing, there can only be one official record of the hearing proceeding. If a court reporter elects to record a hearing upon which to rely upon in making a transcript, that is permissible. Unless the parties stipulate to an electronic recording in lieu of a court reporter transcript, the transcript is the official record. Conducting hearings over Teams or Zoom allows for audio recordings to be created at no cost to either party. Requiring CalRecycle to purchase a transcript when unneeded would not be a responsible use of taxpayer funds. Traditionally, court reporters are independent contractors with different rules about transcript costs and to whom purchased transcripts may be shared. If a respondent requests a transcript that CalRecycle did not need, the respondent will be responsible for costs they have voluntarily incurred.

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I-1-34	Leonard Lang	Section 17063.32 Amicus Briefs We object to the section as written. An amicus brief should be allowed by any interested party and not dependent on the permission of the hearing officer. The section should also be defined as such and not presiding officer which is undefined.	Comment rejected. The Legislature defined "presiding officer" in the APA (Gov. Code, § 11405.80), and the proposed regulations add an additional section about the rules with which the presiding officer must comply. (See proposed rule, § 17063.6.) This section mirrors the amicus brief regulation used in formal APA hearings. (1 CCR 1046.) Allowing amicus briefs as a matter of right could waste the parties' time and resources in responding to irrelevant or repetitive arguments. The proposed regulation allows them when authorized by the presiding officer to ensure a proposed animus brief is capable of adding value in that specific case.
I-1-35	Leonard Lang	ARTICLE 4: General Accounting Requirements Section 2100. Penalties & Interest Charges (a) as amended this section becomes very confusing, lacking clarity and specification of the original regulations that were authorized. This could allow the department to include sections that are not authorized and adopted.	Comment rejected. The listing of particular regulation sections was inconsistent with Public Resources Code section 14591.1(a)(2) which allows CalRecycle to issue a notice of violation for any violation of Division 12.1 of the Public Resources Code, so long as the civil penalty assessed is equal to or less than \$5,000. The amendment which removes this limitation and makes this regulation consistent with statute.
I-1-36	Leonard Lang	This section also refers to PRC Section 14591.1 and identifies maximum penalties of \$5000 pursuant to the section. However, the section specifically refers to formal hearings conducted under section 11500 of the Government code. It's not applicable to informal hearings under GC Section 11445. As I recall, the informal hearing was limited to a total of \$1000 in penalties. This amendment changes that without authority.	CalRecycle respectfully points to Public Resources Code section 14591.1(a)(2), which permits CalRecycle to assess a penalty in an amount equal to or less than five thousand dollars using a Notice of Violation process established by regulation and an informal hearing process pursuant to Article 10 of Chapter 4.5 of the APA.
I-1-37	Leonard Lang	Changing the citation requirements to comply with section 17063.3 removes this from the sections of the regulations that provide recyclers and processors with their instructions. This is a violation of clarity and places undue burden to read and find applicable regulations. It should be deleted.	Comment rejected. Cross-citation of regulation requirements allows for all the requirements to be in one logical place in CalRecycle's regulations, reduces overall text length, and ensures uniformity of requirements across all of CalRecycle's programs.
I-1-38	Leonard Lang	A number of the sentences lack continuity and therefore clarity. The amendments also make unacceptable changes in citing the certified operators for violations. This should be rejected.	CalRecycle rejects this comment. To the extent that amendments to citations to operators should be rejected in section 2100, please see CalRecycle's response to I-1-39. To the extent that the comment suggests increasing clarity, please see CalRecycle's response to I-1-35, I-1-36, I-1-37.
I-1-39	Leonard Lang	The NOV should be issued at the site and at the time it occurred. The operator should receive written notice within 10 days as presently written. Certified operators must have prompt feedback to any deficiencies found by the Division.	Comment rejected. As contemplated, section 17063.3 creates a rule to meet the APA's required notice and service, which is necessary to issue a functional Notice of Violation for all programs within CalRecycle. It is consistent with the statutory requirement to use a notice of violation process established by regulation.
I-1-40	Leonard Lang	Authority cited takes PRC 14530.5 (b) out of context. The section pertains to the department's use of outside services and contractors.	Comment rejected. Public Resources Code section 14530.5(b) is the correct citation as subdivision (b) authorizes CalRecycle to create relevant regulations. Public Resources Code section 14536 authorizes CalRecycle to adopt regulations to implement sections of the California Beverage Container Recycling and Litter Reduction Act.
I-1-41	Leonard Lang	Section 2130. Hearings We object to the use of person instead of "Operator of Record". The terms certified operator, responsible party and become customary over the decades of the program. Changing them to suit other purposes creates confusion for the container recycling program.	Comment rejected. Persons and entities that are subject to the Act and its regulations includes respondents who are not operators of record. (See Pub. Res. Code, § 14595.5.)

Comment Code	Commenter Name	Comment	CalRecycle's Response
I-1-42	Leonard Lang	(c) This amendment should be deleted and rejected. Section (b) provides the right to a formal hearing which better guarantees the rights of the respondent. This would allow the department to sucker the respondent in giving those rights up without knowledge of what they're giving up. They will take advantage of this if it is not rejected. It should be rejected.	Comment rejected. Commenter misunderstands the purpose of this subdivision. When CalRecycle elects to proceed with an informal hearing, this subdivision requires CalRecycle to follow the standardized notice and documentation rules found in the CalRecycle Informal Hearing Rules. Deletion of this subdivision would strip any requirements for CalRecycle to follow the CalRecycle Informal Hearing Rules for proceedings that are not initiated by a Notice of Violation or are not required to be conducted pursuant to Chapter 5 of the APA.
I-1-43	Leonard Lang	Section 2385 Stewardship Plans Anyone stupid enough to get involved with a Stewardship Plan and allow the Division to exercise its judgment as to the compliance of that plan deserves an informal hearing.	Comment rejected. Commenter fails to propose any edits or alterations to the proposed regulations.
I-1-44	Leonard Lang	Section 2386. Penalties & Interest Charges The section lacks clarity but appears to only apply to dealer cooperatives and not certified operators. Again, anyone stupid enough to get involved with Stewardship Plans & dealer co-ops deserves an informal hearing.	Comment rejected. Commenter fails to identify what aspect of the proposed regulation they found unclear or propose a suggested alteration.
I-1-45	Leonard Lang	Section 2500.5 Operation Standards for Mobile Units ARTICLE 4: Recycle Content Newspaper Section 17974. Penalties As written the section should be rejected since it fails to provide clarity by omitting important sections (a), (b) and (c). The changes in section (d) remove reference to the Board and its Director. Authority cited is Section 40502 of the PRC. This section pertains to the Board which ceased existence in 2010. Authority for the Department would require reference to PRC 40501. Again, in general, all citations to section 40502 should be rejected and corrected. Submitted by: Leonard Lang 1713 Mimosa Ln. Euless, TX 76039 Cell phone: 714-321-6607	Comment rejected. CalRecycle is not required to include every subdivision of an existing regulation when only one part is proposed to be amended. There was no reason to include subdivisions (a) through (c) when those subdivisions will remain the same if the proposed changes are adopted. The language in subdivision (d) was amended to remove outdated and unnecessary language. In its place, a reference to the proposed hearing procedures was added. The new procedures maintain the same practices in the original language: the informal hearing will be held at CalRecycle and the Director shall be the final decision-maker.

Comment Code	Commenter Name	Comment	CalRecycle's Response
I-2-1	Leonard Lang	First, I would like to thank you folks for your efforts and wish you a Merry Christmas and happy holidays. A little background, I've been involved with the program since the beginning, and I'm well steeped in the process of rulemaking. I don't know why the informal hearing was created, but it's from my experience been used to eliminate hundreds of recyclers that shouldn't have been eliminated, and it has serious flaws in the program. So I'm thankful for one thing within the proposed regulations, and that's the right to discovery. I assume it's probably because you're having these hearings with local jurisdictions and you want to improve the fairness process, but any way that gets done is good. In my experience, the adjudication process was very primitive. When it was under conservation, hearing officers were an oil and gas engineer, the IT manager, or a geologist. CalRecycle has changed that and gone to attorneys and then a dedicated attorney, but it still lacks the independence of an outside agency like the Office of Administrative Hearings, which the formal hearing provides. And over the years, the department or the program has moved away from formal hearings. As I reviewed these regulations, I found a lot of citations for authority to be incorrect, in my opinion. For example, the citation of Government Code 40502 which refers to the waste board and the power that were used in the waste board, therefore, would be improper to cite that section especially when you have 40501 which specifically refers to the Department CalRecycle, things like this. I have submitted my comments so you will have those.	Comments rejected. The Legislature explained that it created informal hearings to satisfy due process and public policy requirements in a manner that is simpler and faster than other hearing procedures. (Gov. Code, § 11445.10, subd. (b)(1).) Upon review, the California Supreme Court held that the combination of investigative, prosecutorial, and adjudicative functions within a single agency does not, by itself, create bias or violate due process. (Morongo Band of Mission Indians v. State Water Resources Control Bd. (2009) 45 Cal.4th 731, 737.) The California Administrative Procedure Act (APA) authorizes agencies to conduct administrative adjudications internally unless a statute requires the matter be heard by an ALJ at OAH. (Gov. Code, §§ 11400.20, subd. (a); 11405.80; 11445.20, subd. (c).) Scheduling a hearing with OAH can take more than six months. After the hearing, the ALJ issues a proposed decision for the Director's consideration. The Director has discretion to adopt, modify, or reject the ALJ's proposed decision. If rejected, the Department drafts its own decision for approval. In contrast, CalRecycle's informal hearings are conducted by hearing officers under the Director's supervision, with the Director issuing the final written decision. In both formal and informal hearings, the Director serves as the final decision-maker. Informal hearings offer several advantages: they are resolved more quickly, are overseen by adjudicators with subject-matter expertise, and are more cost-effective for taxpayers, as hearing officers are salaried employees and do not charge hourly rates like ALJs. The proposed regulations comply with the APA's separation of functions requirement and separate the adjudicatory role from investigatory and prosecutorial (i.e., enforcement) roles as required by law. (See Gov. Code, § 11425.30, subd. (a)(1), proposed rule § 17063.6, subd. (b).)
I-2-2	Leonard Lang	But I would like to say one of the biggest problems I have there's no standards for the people who were placed in the CalRecycle office of hearings and that's been a problem for the past, so I recommended standards there. I made some other recommendations which I'll get out to other people also. Anyway, I'm going to see if anybody else wants to do this for a while. We don't seem to have people rushing in, but I hope this can come out with something good. So stick with it. Thank you.	Comment rejected. The proposed rules clearly articulate standards for the adjudicators. They mandate compliance with the APA, including the separation of functions and disqualification requirements. (See Gov. Code, §§ 11425.30, 11425.40.) Hearing officers in the CalRecycle Hearing Office are employed by the State of California in the Attorney IV classification. This requires not only admission to practice law in California, but at least six years of licensed practice to perform independent work at an advanced level. CalRecycle declines to list the identities of current staff in its regulations, as that would not add clarity or value.
B-1-1	Don Monroe	Please receive our comment below. CalRecycle Informal Hearing / Rule Making 12/17/2025, Section 17063.13 DISCOVERY . We agree and support this change to support discovery. It would not be good if discovery was not included.	CalRecycle appreciates the commenters' participation in the rulemaking and approval of the rule regarding discovery. Nevertheless, CalRecycle must reject the comment because they do not propose any changes to the proposed rules.
O-1-1	William Mancilla	There should be enhanced rulemaking and changes to allow for Battery electric refuse trucks to be able to haul more load capacity so they can do the same hauls as the CNG refuse trucks. This is a big focal point/challenge for our organization to be able to switch from CNG to EV trucks. The electric refuse trucks can only take half the load capacity compared to the CNG ones. Which for a city is not good.	Comment rejected. This comment falls outside the scope of the current rulemaking, which is limited to procedures for informal administrative adjudications conducted by CalRecycle.

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-2-1	Karim Ameri	Re: Comments on Proposed "CalRecycle Informal Hearing Rules" – Notice Published October 31, 2025 Dear Regulations Coordinator: On behalf of CRV Recycling Solutions, I submit the following comments regarding the proposed CalRecycle Informal Hearing Rules (proposed §§ 17063.1–17063.32 and related amendments). 1. Need for Independence and Due-Process Protection The proposal allows CalRecycle to investigate, charge, and adjudicate its own enforcement actions through employees it designates as "hearing officers." This concentrates power inside one department, eliminating the independent review that the Administrative Procedure Act is intended to preserve. Such a system risks personal bias and undermines public confidence in fair enforcement. Request: Require that all hearings involving civil penalties, certification actions, or payment holds be conducted by independent administrative law judges from the Office of Administrative Hearings (OAH) or by hearing officers structurally separate from CalRecycle's enforcement chain of command.	Comment rejected. The Legislature explained that it created informal hearings to satisfy due process and public policy requirements in a manner that is simpler and faster than other hearing procedures. (Gov. Code, § 11445.10, subd. (b)(1).) Upon review, the California Supreme Court held that the combination of investigative, prosecutorial, and adjudicative functions within a single agency does not, by itself, create bias or violate due process. (Morongo Band of Mission Indians v. State Water Resources Control Bd. (2009) 45 Cal.4th 731, 737.) The California Administrative Procedure Act (APA) authorizes agencies to conduct administrative adjudications internally unless a statute requires the matter be heard by an ALJ at OAH. (Gov. Code, §§ 11400.20, subd. (a); 11405.80; 11445.20, subd. (c).) Scheduling a hearing with OAH can take more than six months. After the hearing, the ALJ issues a proposed decision for the Director's consideration. The Director has discretion to adopt, modify, or reject the ALJ's proposed decision. If rejected, the Department drafts its own decision for approval. In contrast, CalRecycle's informal hearings are conducted by hearing officers under the Director's supervision, with the Director issuing the final written decision. In both formal and informal hearings, the Director serves as the final decision-maker. Informal hearings offer several advantages: they are resolved more quickly, are overseen by adjudicators with subject-matter expertise, and are more cost-effective for taxpayers, as hearing officers are salaried employees and do not charge hourly rates like ALJs. The proposed regulations comply with the APA's separation of functions requirement and separate the adjudicatory role from investigatory and prosecutorial (i.e., enforcement) roles as required by law. (See Gov. Code, § 11425.30, subd. (a)(1), proposed rule § 17063.6, subd. (b).)

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-2-2	Karim Ameri	2. Reasonable Time to Respond Proposed § 17063.4 gives only 15 days to file a Notice of Defense. Small or rural operators cannot reasonably prepare a defense within that time frame. Request: Extend the response deadline to 30 days from service or allow an automatic 15-day extension upon request.	2. Comment rejected. The 15-day deadline to file a Notice of Defense in proposed rule section 17063.4 is consistent with the timeline the Legislature selected for use in formal APA matters, where the amount of process due is typically higher. (Gov. Code, § 11506.) This timeline for filing a Notice of Defense has been utilized for decades across thousands of different cases and respondents in Chapter 5 hearings without any evidence that it denies the right to request a hearing or poses an undue burden. The selection of the 15-day deadline allows CalRecycle to use a time-tested, legislatively approved period for requesting a hearing that matches the same deadline used in CalRecycle's hearings under Chapter 5 of the APA, ensuring consistency across cases. Proposed rule section 17063.4, subdivision (b) sets the deadline for a respondent to file a Notice of Defense with CalRecycle. It does not require a respondent to construct a fully developed case, collect all applicable evidence, or contact all potential witnesses before that date. Rather, the section merely requires that the respondent let CalRecycle know that they would like a hearing, along with a brief statement about the reason they are contesting the agency's finding. Just as the pleading requirements in proposed rule section 17063.3 require CalRecycle to provide enough information upon which the respondent can prepare a defense, the Notice of Hearing section requires that the respondent provide CalRecycle with the reason for the hearing request. Sharing what facts and law are at issue helps both parties prepare for hearing and may result in voluntary settlement discussions. If, after gathering more evidence, either party decides that they no longer wish to go to hearing, the proposed rules offer a mechanism by which they can withdraw the hearing request. (See proposed rule § 17063.24.) As a whole, this structure facilitates speedy access to a due process hearing and an exchange of information that benefits all parties.
O-2-3	Karim Ameri	3. Automatic Stay During Appeal Because § 17063.29 states that judicial review does not stay enforcement, CalRecycle could continue payment holds even after a timely appeal is filed, causing severe financial harm to recycling centers and processors. Request: Add an automatic stay of all payment holds, penalties, and certification suspensions once a Notice of Defense is filed, unless CalRecycle makes a written finding of immediate harm to the fund.	3. Comment rejected. Section 17063.29 covers procedures for seeking a writ of administrative mandate from a superior court. It aligns with California Code of Civil Procedure section 1094.5, subdivision (g). Under that provision, the superior court has the authority to determine whether a stay is warranted, following a proper request by the petitioner. CalRecycle declines to override judicial authority by automatically applying a stay in all cases where a writ is filed. Automatically staying enforcement would delay the implementation of final decisions and incentivize strategic filings intended solely to postpone compliance. The proposed regulations preserve a party's ability to seek a stay through established judicial procedures and ensure consistency and efficiency across all CalRecycle programs that utilize informal hearings.

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-2-4	Karim Ameri	4. Unintentional Errors and Labeling Issues Beginning July 1, 2025, wine and spirits containers will enter the system with inconsistent or missing CRV labels. These labeling requirements belong to bottlers and retailers, not redemption centers. Operators acting in good faith should not face violations or payment holds for these errors. Request: Add: "Acceptance of otherwise eligible beverage containers that are unlabeled or mislabeled shall not, by itself, constitute grounds for a civil penalty unless the Department proves intent to commit fraud or to cause financial harm to the program."	4. Comment rejected. This rulemaking package addresses the procedures for informal administrative hearings. It does not modify the substantive standards for what constitutes a violation under CalRecycle's programs. The commenter's request to exempt certain violations based on good faith would require a substantive change to the underlying enforcement framework, which is governed by statute and regulations outside of this rulemaking. CalRecycle declines to introduce an intent requirement for other, unspecified regulations where none exist in statute, as doing so would exceed the scope of this procedural rulemaking.
O-2-5	Karim Ameri	5. Intent Requirement and Proportionate Penalties CalRecycle should distinguish fraud from clerical or reporting mistakes. An honest typo in DORIS must not trigger the same penalty as deliberate falsification. Request: Clarify that (1) civil penalties require proof of intent, and (2) penalties cannot exceed 1,000 times the actual harm to the fund.	5. Comment rejected. This rulemaking package establishes procedures for informal administrative hearings and does not alter the statutory standards governing the imposition of civil penalties. Whether intent is required to establish a violation and the level of the applicable penalty are substantive questions governed by statute. These policy matters fall outside the scope of this procedural rulemaking. The level of any penalty will be determined in accordance with the relevant statute for the specific program and based on the factual evidence presented at the hearing.
O-2-6	Karim Ameri	6. Transparency and Industry Review Fairness requires both visibility and balance. CalRecycle should publish anonymized precedent decisions and establish an advisory review panel (two processors and two local-government representatives) to evaluate whether penalty amounts are reasonable before final adoption.	6. Comment rejected. The proposed regulations follow the APA's requirements. Government Code section 11425.60 governs the use of precedential decisions. That section does not authorize the publication of anonymized decisions as precedent. It also does not require a separate notice and comment period before the designation of a decision as precedential. CalRecycle will continue to follow the APA's requirements for designating and publishing precedential decisions. (See proposed rule § 17063.27, subd. (c).) With respect to the request to establish an external advisory panel, CalRecycle notes that none of the programs subject to these procedural regulations contain statutory language authorizing delegation of enforcement authority to individuals outside the agency. Penalty determinations will continue to be made in accordance with applicable statutes and based on the factual evidence presented during the hearing process.

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-2-7	Karim Ameri	7. Reservation of Rights and Future Action If these rules are adopted without meaningful external review or independent oversight, Recycling reserves all rights to seek administrative or judicial relief under Government Code §§ 11342 and 11350 to protect the due-process rights of recycling centers and processors statewide. Conclusion CRV Recycling Solutions supports efficiency and consistency in enforcement but cannot support a system that lets CalRecycle serve as prosecutor, judge, and jury in its own cases. A fair hearing structure must include independent decision-makers, reasonable timelines, automatic stays during appeals, and clear protection for operators acting in good faith. These changes will promote compliance and preserve the trust of California's recycling industry. Thank you for considering these comments and for keeping stakeholders involved as the rulemaking proceeds. Sincerely, Karim Ameri CRV Recycling Solutions karim@crvsites.com (818) 620-1933	7. Comment rejected. This rulemaking process is being conducted in accordance with the APA, which provides for public participation and meaningful external review through the formal comment process. The commenter, as an external stakeholder, exercised their right to review the proposed regulations before implementation and submit formal comments. CalRecycle appreciates the commenter's participation in the rulemaking process.
O-3-1	Mark Pestrella	CALRECYCLE INFORMAL HEARING RULES REGULATIONS Public Works would like to thank the California Department of Resources Recycling and Recovery (CalRecycle) for soliciting feedback and recommendations on the rulemaking activities regarding the CalRecycle Informal Hearing Rules Regulations. The proposed regulations will standardize procedures, making the rules clear and uniform across all informal hearings conducted by CalRecycle. Public Works offers the following comments for CalRecycle's consideration: 1.The time periods for responding to statements of charges and Notices of Violation,including the 15-day deadline to file a Notice of Defense, may be insufficient.Enforcement matters under Senate Bill 1383 and Senate Bill 54 typically involvemulti-year records, contractor oversight issues, contamination assessments,procurement compliance evaluations, and operational field data. Internal reviewrequires coordination across departments as well as legal review and executiveauthorization. A minimum of 30-60 days is necessary to avoid inadvertent waiversand to allow for a meaningful opportunity to respond. Deadline extensions shouldbe allowed upon a showing of good cause.	Comment rejected. The 15-day deadline to file a Notice of Defense in proposed rule section 17063.4 is consistent with the timeline the Legislature selected for use in formal APA matters, where the amount of process due is typically higher. (Gov. Code, § 11506.) This timeline for filing a Notice of Defense has been utilized for decades across thousands of different cases and respondents in Chapter 5 hearings without any evidence that it denies the right to request a hearing or poses an undue burden. The selection of the 15-day deadline allows CalRecycle to use a time-tested, legislatively approved period for requesting a hearing that matches the same deadline used in CalRecycle's hearings under Chapter 5 of the APA, ensuring consistency across cases. Proposed rule section 17063.4, subdivision (b) sets the deadline for a respondent to file a Notice of Defense with CalRecycle. It does not require a respondent to construct a fully developed case, collect all applicable evidence, or contact all potential witnesses before that date. Rather, the section merely requires that the respondent let CalRecycle know that they would like a hearing, along with a brief statement about the reason they are contesting the agency's finding. Just as the pleading requirements in proposed rule section 17063.3 require CalRecycle to provide enough information upon which the respondent can prepare a defense, the Notice of Hearing section requires that the respondent provide CalRecycle with the reason for the hearing request. Sharing what facts and law are at issue helps both parties prepare for hearing and may result in voluntary settlement discussions. If, after gathering more evidence, either party decides that they no longer wish to go to hearing, the proposed rules offer a mechanism by which they can withdraw the hearing request. (See proposed rule § 17063.24.) As a whole, this structure facilitates speedy access to a due process hearing and an exchange of information that benefits all parties.

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-3-2	Mark Pestrella	2. The proposal restricts discovery to witness lists and documents that a party intends to introduce as exhibits. Jurisdictions may require access to investigative materials, notes, data relied upon by CalRecycle, communications with regulated entities, and foundational documents to evaluate allegations and prepare a defense adequately. This would require CalRecycle to allow broader discovery rights and a lower threshold for requesting additional discovery than the “exceptional circumstances” required under Section 11507.6 of the California Government Code.	2. Comment rejected. The proposed regulations utilize a simplified discovery process consistent with the informal nature of the hearing, while allowing for a more expansive discovery process in exceptional circumstances. Typically, discovery will consist of exchanging witness names, a summary of their expected testimony, and copies of the proposed exhibits. This discovery takes place upon the request of either party, rather than being automatic in all cases. Parties are also free to voluntarily exchange materials exceeding what the section requires. Parties may also request discovery consistent with the formal APA process (see Gov. Code, § 11507.6) under section 17063.13, subdivision (d). The hearing officer will determine whether the party has demonstrated a need for a more extensive, time-intensive, and costly discovery process based on the facts of that specific case. This case-by-case approach prevents expensive and lengthy "fishing expeditions," ensures that the parties' rights are protected, and maintains an efficient and accessible informal hearing process as a default.
O-3-3	Mark Pestrella	3. The proposed authority allowing CalRecycle to designate certain decisions as precedent could significantly influence statewide policy. Because precedent decisions could affect all jurisdictions, CalRecycle should provide public notice and an opportunity to comment before designating a decision as precedent, or, at a minimum, solicit input from jurisdictions directly affected by the potential designation. If you have any questions, please contact Mr. Christopher Sheppard at (626) 458-3592 or csheppard@pw.lacounty.gov, Monday through Thursday, 7 a.m. to 5:30 p.m. Very truly yours, MARK PESTRELLA Director of Public Works CID TESORO Deputy Director	3. Comment rejected. The proposed regulations follow the APA's requirements. Government Code section 11425.60 governs the use of precedential decisions. That section does not authorize the publication of anonymized decisions as precedent. It also does not require a separate notice and comment period before the designation of a decision as precedential. CalRecycle will continue to follow the APA's requirements for designating and publishing precedential decisions. (See proposed rule § 17063.27, subd. (c).) With respect to the request to establish an external advisory panel, CalRecycle notes that none of the programs subject to these procedural regulations contain statutory language authorizing delegation of enforcement authority to individuals outside the agency. Penalty determinations will continue to be made in accordance with applicable statutes and based on the factual evidence presented during the hearing process.

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-4-1	Michael Van Winkle	MED-Project appreciates the opportunity to submit the attached comments on CalRecycle's Proposed Informal Hearing Rules Regulations. MED-Project and its affiliated MED-Project companies operate drug and sharps take-back programs in states and other jurisdictions across the country, including in California. Since 2021, MED-Project has been successfully implementing product stewardship plans for covered drugs and home-generated sharps waste in California pursuant to SB 212. To date, CalRecycle has approved MED-Project's annual reports for each year it has been operating SB 212 covered drug and home-generated sharps waste programs. As a program operator invested in California operations, MED-Project appreciates the opportunity to comment on the Informal Hearing Rules. For the reasons described in the attached comments, MED-Project is concerned the Informal Hearing Rules: (1) provide insufficient time for responses to CalRecycle statements of charges; (2) fail to adequately protect privileged information; and (3) include a provision that should be revised for consistency with the SB 212 enforcement scheme. 1. CalRecycle should revise the Informal Hearing Rules to provide respondents 30 days to request a hearing and respond to statements of charges. Under the Informal Hearing Rules, a respondent would have only 15 days to file a Notice of Defense that both requests a hearing by “identifying] the basis for the hearing request” and discloses “admissions, objections, or defenses to the pleading’s allegations.” (Proposed 14 CCR § 17063.4(b); § 18975.1). This proposal would <u>halve</u> the time respondents currently have to preserve their legal rights in SB 212 enforcement actions. See 14 CCR 18975.1 (providing 30 days from receipt of an accusation for hearing requests). It would do the same for several other programs. (See proposed 14 CCR § 2385 (Dealers and Dealer Cooperatives); proposed 14 CCR § 2500.5 (Recycling Centers); proposed 14 CCR § 17974 (Recycled Content Newsprint); proposed 14 CCR § 18458 (Waste Tire Facilities and Hauler Registrations); proposed 14 CCR § 18643.0 (Used Oil Recycling Program); proposed 14 CCR § 18971 (Used Mattress Recovery and Recycling Program). Thirty-days is a reasonable timeline and is consistent with other California environmental programs administered by the California Air Resources Board, the State Water Resources Control Board, and the Department of Pesticide Regulation, which all provide <u>30 days</u> for an aggrieved party to request a hearing or seek review. (See, e.g., 17 CCR § 60075.17(d) (30 days to request hearing on CARB citations); 23 CCR §§ 2050(a), 3867(c) (30 days to petition the State Water Board for review); 3 CCR § 6196.1(a)(3) (30 days to request a hearing before pesticide registration suspension becomes ineffective). There is no reason CalRecycle should make it more difficult for respondents to be heard or preserve their rights. A 30-day timeline to request a hearing and provide a notice of defense is consistent with administrative due process norms and with the practical reality that regulated entities require time to identify counsel, review allegations, gather documentation, and prepare a Notice of Defense. CalRecycle should preserve the 30-day deadline to request a hearing and file a Notice of Defense. As such, it should edit § 17063.4(b) of the Informal Hearing Rules as follows: (b)Within 15 30 days of being served with a section 17063.3 pleading, therespondent may request a hearing by filing a Notice of Defense with theDepartment 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 30-day period after service of the statement of issues or statement ofcharges. An electronically served Notice of Defense is deemed to be filedon the date emailed. The right to an informal hearing is waived if therespondent does not return the Notice of Defense within the 15 30-day period.	1. Comment rejected. The 15-day deadline to file a Notice of Defense in proposed rule section 17063.4 is consistent with the timeline the Legislature selected for use in formal APA matters, where the amount of process due is typically higher. (Gov. Code, § 11506.) This timeline for filing a Notice of Defense has been utilized for decades across thousands of different cases and respondents in Chapter 5 hearings without any evidence that it denies the right to request a hearing or poses an undue burden. The selection of the 15-day deadline allows CalRecycle to use a time-tested, legislatively approved period for requesting a hearing that matches the same deadline used in CalRecycle's hearings under Chapter 5 of the APA, ensuring consistency across cases. Proposed rule section 17063.4, subdivision (b) sets the deadline for a respondent to file a Notice of Defense with CalRecycle. It does not require a respondent to construct a fully developed case, collect all applicable evidence, or contact all potential witnesses before that date. Rather, the section merely requires that the respondent let CalRecycle know that they would like a hearing, along with a brief statement about the reason they are contesting the agency's finding. Just as the pleading requirements in proposed rule section 17063.3 require CalRecycle to provide enough information upon which the respondent can prepare a defense, the Notice of Hearing section requires that the respondent provide CalRecycle with the reason for the hearing request. Sharing what facts and law are at issue helps both parties prepare for hearing and may result in voluntary settlement discussions. If, after gathering more evidence, either party decides that they no longer wish to go to hearing, the proposed rules offer a mechanism by which they can withdraw the hearing request. (See proposed rule § 17063.24.) As a whole, this structure facilitates speedy access to a due process hearing and an exchange of information that benefits all parties.

Comment Code	Commenter Name	Comment	CalRecycle's Response
O-4-2	Michael Van Winkle	2. Respondents should not be forced to share privileged information. Proposed 14 CCR § 17063.21(d) states that: “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.” Because the presiding officer in these informal hearings is a CalRecycle employee, not an independent adjudicator, any privileged documents submitted for “private review” under proposed 14 CCR § 17063.21(d) would be disclosed directly to an employee of the same agency that initiated the enforcement action. This result is arbitrary and capricious. It is also inconsistent with Cal. Gov. Code 11445.60(a), which provides that “[i]f disclosure of a fact, allegation, or source is privileged or expressly prohibited by a regulation, statute, or the federal or state Constitution, the presiding officer may require the party to indicate that confidential facts, allegations, or sources are involved, <u>but not to disclose the confidential facts, allegations, or sources.</u>” (emphasis added). The Informal Hearing Rules must not allow CalRecycle to obtain privileged information it would generally be unable to obtain in a court of law or otherwise under the Government Code. Compelled disclosure to the presiding officer for a private review, coupled with the lack of express limits in the Informal Hearing Rules on how the presiding officer may use or disclose the information it receives, violates basic principles of fairness and due process. Instead, the regulations should prevent even the appearance that future enforcement actions or appeals could have been influenced by privileged information. To address these concerns, CalRecycle should clarify respondents do not need to disclose privileged information, and CalRecycle should remove the authority for CalRecycle employees to make privilege assessments, by striking the text as shown below. 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.	2. Comment rejected. This provision is modeled after the procedures in Gov. Code, § 11507.7(d)–(e), which allows the presiding officer in a formal APA hearing to order a party to produce items alleged to be privileged or not discoverable for in-camera inspection. Without a provision that allows the presiding officer to examine items claimed to be privileged, a party could withhold all items of evidence, claiming privilege. There would be no oversight or recourse to address improper withholdings. The proposed regulation allows a neutral adjudicator—the presiding officer—to perform a private review of items to ensure the privilege claims are valid. The procedures in Article 10, including Government Code section 11445.60, subdivision (a), are discretionary. (Gov. Code, § 11445.10(a) ["Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the informal hearing procedure provided in this article."]) Through this rulemaking, CalRecycle is exercising its right to draft its own, agency-specific set of hearing procedures for its informal hearings rather than rely on Article 10. (Gov. Code, § 11400.20.) Commenter's concern about future enforcement actions based on in-camera review is misplaced. CalRecycle follows the APA's separation of functions requirement. (Gov. Code, § 11425.30.) CalRecycle's investigation and enforcement activities are separate from the adjudication functions performed by hearing officers working directly under the Director.
O-4-3	Michael Van Winkle	3. CalRecycle should revise proposed 14 CCR § 18975.1(b) for consistency with the SB 212 enforcement scheme. The Informal Hearing Rules would revise 14 CCR § 18975.1(b) to state that 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 phrasing “jurisdiction, person, and/or entity” is inconsistent with the SB 212 enforcement scheme and should be revised. The immediately preceding provision in the existing regulations – 14 CCR § 18975.1(a) – refers to CalRecycle issuing a notice of violation to certain specified parties, such as program operators and stewardship organizations. 14 CCR § 18975.1(a) refers to these parties collectively as “the respondent,” which is the same term 14 CCR § 18975.1(b) currently uses. (See 14 CCR § 18975.1(a), (b)). SB 212 also refers to specified parties like program operators and stewardship organizations in discussing administrative penalties. (See Cal. Pub. Res. § 42035.2). The Informal Hearing Rules would drop this terminology in proposed § 18975.1(b) and instead introduce the phrasing “jurisdiction, person, and/or entity.” This new phrasing is confusing and does not align with SB 212 and its regulations. CalRecycle should revise it to refer to “the respondent” as shown below. The department shall commence an action to impose administrative civil penalties by serving a statement of charges to the jurisdiction, person, and/or entity respondent in accordance with California Code of Regulations, Title 14, Section 17063.3. * * * MED-Project appreciates the opportunity to comment on the proposed Informal Hearing Rules. Sincerely yours, Michael R. Van Winkle Executive Director	3. Adopt non-substantive change. CalRecycle will replace the words "jurisdiction, person, and/or entity" with "respondent" in section 18975.1, subdivision (b), as requested by the commenter.

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O-5-1	Curtis Larkin	To Whom it May Concern, On behalf of the Solid Waste Association of North America's (SWANA) California Chapters Legislative Task Force (LTF), I write to provide feedback on the CalRecycle's formal rulemaking activities regarding the CalRecycle Informal Hearing Rules. SWANA is the world's largest association of solid waste professionals (more than 10,000 members). SWANA's three California chapters represent approximately 1,000 of those members. SWANA represents the solid waste industry, including many of the local governments responsible for implementing waste diversion and recycling programs. The LTF is responsible for representing the California Chapters on legislative and regulatory issues and advocates for environmentally and economically sound management of municipal solid waste. We respectfully offer the following comments listed below. • The time periods for responding to statements of charges and Notices of Violation, including the 15-day deadline to file a Notice of Defense, may be insufficient. Enforcement matters under SB 1383 and SB 54 typically involve multi-year records, contractor oversight issues, contamination assessments, procurement compliance evaluations, and operational field data. Internal review requires coordination across departments as well as legal review and executive authorization. A minimum of 30-60 days is necessary to avoid inadvertent waivers and to allow for a meaningful opportunity to respond. Deadline extensions should be allowed upon a showing of good cause.	1. Comment rejected. The 15-day deadline to file a Notice of Defense in proposed rule section 17063.4 is consistent with the timeline the Legislature selected for use in formal APA matters, where the amount of process due is typically higher. (Gov. Code, § 11506.) This timeline for filing a Notice of Defense has been utilized for decades across thousands of different cases and respondents in Chapter 5 hearings without any evidence that it denies the right to request a hearing or poses an undue burden. The selection of the 15-day deadline allows CalRecycle to use a time-tested, legislatively approved period for requesting a hearing that matches the same deadline used in CalRecycle's hearings under Chapter 5 of the APA, ensuring consistency across cases. Proposed rule section 17063.4, subdivision (b) sets the deadline for a respondent to file a Notice of Defense with CalRecycle. It does not require a respondent to construct a fully developed case, collect all applicable evidence, or contact all potential witnesses before that date. Rather, the section merely requires that the respondent let CalRecycle know that they would like a hearing, along with a brief statement about the reason they are contesting the agency's finding. Just as the pleading requirements in proposed rule section 17063.3 require CalRecycle to provide enough information upon which the respondent can prepare a defense, the Notice of Hearing section requires that the respondent provide CalRecycle with the reason for the hearing request. Sharing what facts and law are at issue helps both parties prepare for hearing and may result in voluntary settlement discussions. If, after gathering more evidence, either party decides that they no longer wish to go to hearing, the proposed rules offer a mechanism by which they can withdraw the hearing request. (See proposed rule § 17063.24.) As a whole, this structure facilitates speedy access to a due process hearing and an exchange of information that benefits all parties.
O-5-2	Curtis Larkin	The proposal restricts discovery to witness lists and documents that a party intends to introduce as exhibits. Jurisdictions may require access to investigative materials, notes, data relied upon by CalRecycle, communications with regulated entities, and foundational documents to evaluate allegations and prepare a defense adequately. This would require CalRecycle to allow broader discovery rights and a lower threshold for requesting additional discovery than the "exceptional circumstances" required under section 11507.6 of the Government Code.	2. Comment rejected. The proposed regulations utilize a simplified discovery process consistent with the informal nature of the hearing, while allowing for a more expansive discovery process in exceptional circumstances. Typically, discovery will consist of exchanging witness names, a summary of their expected testimony, and copies of the proposed exhibits. This discovery takes place upon the request of either party, rather than being automatically required in all cases. Parties are also free to exchange information not referenced in this subdivision voluntarily. Parties may also request the hearing officer order discovery consistent with the formal APA process (see Gov. Code, § 11507.6) under section 17063.13, subdivision (d). The hearing officer will determine whether the party has demonstrated a need for a more extensive, time-intensive, and costly discovery process based on the facts of that case. This case-by-case approach ensures that the parties' rights are protected while maintaining the efficiency and accessibility of the informal hearing process as a default.

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O-5-3	Curtis Larkin	As proposed, the sanctions provisions authorize penalties for "frivolous" or "bad-faith" actions. This creates a risk of discouraging legitimate advocacy in highly technical or unsettled areas of law, particularly given the evolving implementation of SB 54 and SB 1383. CalRecycle should include explicit language clarifying that good-faith legal or factual disagreements regarding SB 54 or SB 1383 implementation cannot serve as the basis for sanctions.	3. Comment rejected. The proposed regulation uses the sanction authority granted by Government Code section 11455.10 and adds additional clarity by mirroring the standards set in California Code of Civil Procedure section 128.5. For decades, courts have utilized this provision to shift costs when one party engages in frivolous or bad faith actions. Section 128.5's language has not hampered any party's ability to advance good-faith arguments on new or unsettled legal issues, making it a time-tested model to follow. A section that only penalizes frivolous or bad-faith conduct does not need to add a carve out to protect good-faith arguments because those arguments do not fall under the description of sanctionable conduct.
O-5-4	Curtis Larkin	The proposed authority allowing CalRecycle to designate certain decisions as precedent could significantly influence statewide policy. Because precedent decisions could affect all jurisdictions, CalRecycle should provide public notice and an opportunity to comment before designating a decision as precedent, or, at a minimum, solicit input from jurisdictions directly affected by the potential designation. Thank you for the opportunity to provide feedback on this important issue. If you have any questions about our feedback or suggested amendments, we would be happy to discuss them further. Sincerely, Curtis Larkin Chair SWANA California Chapters Legislative Task Force	4. Comment rejected. The proposed regulations follow the APA's requirements. Government Code section 11425.60 governs the use of precedential decisions. That section does not authorize the publication of anonymized decisions as precedent. It also does not require a separate notice and comment period before the designation of a decision as precedential. CalRecycle will continue to follow the APA's requirements for designating and publishing precedential decisions. (See proposed rule § 17063.27, subd. (c).) With respect to the request to establish an external advisory panel, CalRecycle notes that none of the programs subject to these procedural regulations contain statutory language authorizing delegation of enforcement authority to individuals outside the agency. Penalty determinations will continue to be made in accordance with applicable statutes and based on the factual evidence presented during the hearing process.
O-6-1	Ms. Wilson	My name is Ms. Wilson. I'm from BH&W Public Relations Firm, so please forgive my ignorance a little bit here. I looked over the documents and I'm a little bit confused. Are we saying changing the rules because the prior rule giver was as part of the industry that we're no longer associating ourself with as a state? That I'm not really sure how these rules will make us better or make the process flow even easier. Since there's no one here to give us a presentation in the prior appointment for this hearing, I am a little confused as to how this is going to make us better, or is it going to make the system run more smoothly? So I'm a little bit confused. I wish someone was here to clarify the rules, changes, and why we're even engaging in this; or is it just based on prior industry we no longer want in the State of California? ...At this point, you won't be getting any answers to your questions here, but if I might try to interpret your questions for purposes of rulemaking, it sounds like you believe that the regulations are unclear on their face and perhaps not supported by the purpose and the necessity statements in the initial statement of reasons. Would that be a fair rephrasing of your comment? And just for the record I'm noting that the commenter is nodding their head.	Comment rejected. Commenter fails to specify any section or language that is unclear. The proposed regulations are written in plain language to ensure transparency and accessibility for parties participating in informal hearings. Having a uniform set of informal hearing procedures will ensure consistent and efficient treatment for those parties. The regulations are supported by a 145-page Initial Statement of Reasons, supplying the purpose and necessity for every subdivision being added or amended.