

Department of Resources Recycling and Recovery
CalRecycle Informal Hearing Rules Regulations

FINAL STATEMENT OF REASONS

UPDATE TO INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISOR), released on October 31, 2025, is incorporated by reference herein. The ISOR contained a description of the rationale for the proposed amendments. On October 31, 2025, all Documents Relied Upon and identified in the ISOR were made available to the public.

UPDATE TO SPECIFIC PURPOSE AND NECESSITY OF THE PROPOSED REGULATIONS

Subsection 17063.4(b)(2)

The Initial Statement of Reasons erroneously included references to penalty of perjury, which is a misstatement. CalRecycle corrects this misstatement by offering the updated specific purpose and necessity of this subsection below.

The purpose of this subsection is to specify the required content of the Notice of Defense, including the basis for the hearing request, admissions, objections, or defenses to the allegations, respondent and representative contact information, and a certification signed that the information is true and correct to the best of their knowledge.

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

Subsection 2100(a)(1)

The Initial Statement of Reasons erroneously described the new requirement for the time for service of a notice of violation (NOV) as 10 working days, which is a misstatement. The new requirement is within 90 working days as noticed in the proposed text made available during the initial notice and comment period. CalRecycle corrects this misstatement by offering the updated specific purpose and necessity of this subsection below.

The purpose of this amendment is to establish a clear and enforceable timeframe for serving an NOV and to specify the recipient of the NOV. The previous regulation only required the NOV to include a brief statement of the alleged violations but did not provide guidance on when the 10-working-day period began or to whom it should be

directed. By requiring that the NOV be served upon the person on whom the civil penalty is being imposed within 90-working days of the discovery of the violation by department staff, the amendment ensures that enforcement actions are carried out in a timely and consistent manner. This change improves procedural transparency and enhances due process by ensuring that respondents receive prompt notice of the alleged violation and corresponding penalty.

This amendment is necessary to ensure timely enforcement and provide respondents with adequate notice to prepare a response or challenge the violation. Establishing a 90-working-day deadline from the discovery of the violation prevents unnecessary delays and ensures uniform enforcement across cases. Additionally, the amendment clarifies that the NOV must be served on the person on whom the penalty is being imposed, ensuring that enforcement actions are directed appropriately. These changes help streamline the enforcement process, enhance fairness, and align with best practices for regulatory compliance.

Subsection 2500.5(k)(2)

The Initial Statement of Reasons erroneously described the old requirement of 30 days as 20 days for an operator of an anchor recycling center to request a hearing on a notice of rescission of an approval of a mobile unit. The description of the old requirement of 20 days is a misstatement. CalRecycle corrects this misstatement by offering the updated specific purpose and necessity of this subsection below.

The purpose of this amendment is to align the appeal process for approval rescission for mobile units or anchor recycling centers with the CalRecycle Informal Hearing Rules.

The previous regulation provided that appeals would be accepted within 30 days of notice regarding the intent to rescind approval. The prior regulation also provided that Article 10 of the APA applied rather than the structured, department-wide adjudicative framework established in the CalRecycle Informal Hearing Rules.

This amendment is necessary to eliminate outdated regulatory language and procedural requirements, ensuring that appeals within CalRecycle follow a single, consistent process. The prior version predated the CalRecycle Informal Hearing Rules and contained a separate appeal process that could lead to confusion and inconsistencies in informal adjudications.

NONSUBSTANTIAL CHANGES MADE TO THE REGULATION TEXT

Subsection 17063.4(b): CalRecycle deleted “mailing” as subsection 17063.4(b)(1) is explicit in that it allows a Notice of Defense to be served electronically. This change improves clarity without changing its regulatory effect by removing confusion as to whether there is only one specified manner of the service of a Notice of Defense as opposed to the explicit allowance of electronic service in (b)(1).

Subsection 17063.5(a)(1): CalRecycle changed “no payment” to “nonpayment” to correct a grammatical error and improve the clarity of the regulation without changing its regulatory effect.

Subsections 17063.19(a)(1)–(3): Subsection (a)(1) contained all provisions that needed to be broken out to subsections (a)(1), (a)(2), and (a)(3). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsection 17063.20(b)(1)–(3): Subsection (b)(1) contained all provisions that needed to be broken out to subsections (b)(1), (b)(2), and (b)(3). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsection 17063.20(b)(4): This is renumbered to incorporate the breaking out of subsections (b)(1), (b)(2), and (b)(3). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsection 17063.21(d)–(f): Subsection (d) contained all provisions that needed to be broken out to subsections (d), (e), and (f). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsections 17063.21(h)–(i): These are renumbered to incorporate the breaking out of subsection (d) into subsections (d), (e), and (f). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsections 17063.23(c)(1)–(2): These are renumbered to incorporate the breaking out of subsection (c) into subsections (c)(1) and (c)(2). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsections 17063.26(a)–(d): These are renumbered to incorporate the breaking out of subsection (a) into subsections (a), (b), (c), and (d). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsections 17063.26(e)–(f): These are renumbered to incorporate the breaking out of subsection (a) into subsections (a), (b), (c) and (d). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Title of Section 17063.29 is changed from “Judicial Reviews” to “Judicial Review” as this is a more correct title, conforms with the Initial Statement of Reasons, and is a change without regulatory effect.

Subsection 17063.31(d)(1)–(2): Subsection (d) contained all provisions that needed to be broken out to subsections (d), (d)(1), and (d)(2). This conforms with the Initial Statement of Reasons, is a numerical reordering of language already noticed to the public, and is a change without regulatory effect.

Subsections 2100, 2130, 2385, 2386, 2500.5, 17974, 18458, 18464, 18466, 18643.0, 18971, 18975.1, 18975.2, 18997.5, and 18997.6 have had their formatting corrected to standardize font size, alignment, and spacing. These are changes to formatting of language already noticed to the public, and is a change without regulatory effect.

Subsection 18975.1(b): CalRecycle changed “jurisdiction, person, and/or entity” to “respondent” in response to a comment. “Respondent” was the term used in the subsection before CalRecycle proposed amendment and includes the jurisdictions, persons, and entities that would receive a statement of charges.

Various subsections: CalRecycle corrected grammar, syntax, citation format, and typographical errors throughout the text. These are all changes without regulatory effect.

LOCAL MANDATE DETERMINATION

CalRecycle has determined that this regulatory action will not result in a mandate to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the ISOR, in CalRecycle’s summary and response to public comments, and in this FSOR, CalRecycle has determined that no alternative considered by CalRecycle would be more effective in carrying out the purpose for which the regulatory action was proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action taken by CalRecycle.

Statement Regarding Small Business Alternatives

No alternatives were considered by CalRecycle nor otherwise identified and brought to CalRecycle’s attention that would lessen any adverse economic impact on small business, pursuant to Government Code section 11346.9(a)(5).

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

Summary of Comments Received

Written comments were received by CalRecycle during the 45-day comment period, which began on October 31, 2025, and ended on December 17, 2025. Written and oral comments were additionally received at a public hearing on December 17, 2025.

The comments received during the 45-day comment period and public hearing are attached as the CalRecycle Informal Hearing Rules Rulemaking Comment Matrix, which shows the corresponding comment code, the commenter's name, the comment and CalRecycle's response to the comment. Please refer to the CalRecycle Informal Hearing Rules Rulemaking Comment Matrix for the list of 67 total comments received during the 45-day comment period and public hearing. The CalRecycle Informal Hearing Rules Rulemaking Comment Matrix is incorporated by reference to the Final Statement of Reasons.

These 3 categories of comments are organized based upon the underlying regulatory concepts that the comments relate to:

1. Comments Outside of Package Scope
2. Comments Related to Package as a Whole
3. Comments Related to Specific Issues

CalRecycle's Response to Comments Received

CalRecycle would like to express its appreciation to the numerous organizations, agencies, and individuals that participated in the 45-day comment period and public hearing. CalRecycle concluded no substantive changes were needed.

A summary of comments on the CalRecycle Informal Hearing Rules Regulations, as well as CalRecycle's responses, are categorized and provided below.

1. Comments Outside of Package Scope

CalRecycle received 3 comments that suggested regulatory changes that were outside the scope of the rulemaking effort. These comments and CalRecycle's responses are summarized below under their respective subcategory.

Comment about electric refuse trucks

Comment Code O-1-1

Comment Summary: Commenter requests regulatory changes to allow electric refuse trucks to carry more weight so they can perform the same routes as CNG trucks.

CalRecycle's Response: 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 about adding a good-faith exception for violations

Comment Code O-2-4

Comment Summary: Commenter is concerned that redemption centers may receive containers with missing or inconsistent CRV labels due to errors by bottlers and

retailers. They request a good-faith exception for violations unless CalRecycle proves intent to defraud or cause financial harm.

CalRecycle's Response: 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 exists in statute, as doing so would exceed the scope of this procedural rulemaking.

Comment about limiting fines based on intent

Comment Code O-2-5

Comment Summary: Commenter requests that CalRecycle distinguish between intentional fraud and unintentional errors. They ask that civil penalties require proof of intent and be proportionate, not exceeding 1,000 times the actual harm to the fund.

CalRecycle's Response: 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.

2. Comments Related to Package as a Whole

CalRecycle received 10 comments that suggested regulatory changes that were related to the package as a whole. These comments and CalRecycle's responses are summarized below under their respective subcategory.

Concern about internal adjudications

Comment Codes O-2-1 and I-2-1

Comment Summary: Commenter feels that allowing CalRecycle to investigate, prosecute, and adjudicate its own enforcement actions raises due process concerns. They request that certain hearings be conducted by administrative law judges (ALJs) from the Office of Administrative Hearings (OAH) or by hearing officers structurally separate from CalRecycle's enforcement functions.

CalRecycle's Response: 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 to 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 about external review and independent oversight

Comment Code O-2-7

Comment Summary: Commenter states that if the proposed rules are adopted without meaningful external review or independent oversight, they reserve the right to seek administrative or judicial relief.

CalRecycle's Response: 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. This process gives the public the opportunity to review the proposed regulations and supporting documentation, then submit written or oral comments proposing changes prior to adoption of the proposed regulations. This process is utilized for all permanent regulations enacted at CalRecycle, including the prior programmatic regulations that impacted informal hearings.

The commenter, as 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.

General objection to the rulemaking package

Comment Code O-6-1

Comment Summary: Commenter feels the regulations are unclear on their face and unsupported by the purpose and necessity statement.

CalRecycle's Response: Comment rejected. Commenter fail 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.

Comment Code I-1-38

Comment Summary: Commenter finds that several sentences lack continuity and clarity, and that the amendments make unacceptable citation changes and should be rejected.

CalRecycle's Response: 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 Comment Code I-1-39. To the extent that the comment suggests increasing clarity, please see CalRecycle's response to Comment Codes: I-1-35, I-1-36, and I-1-37.

Comment about authorities and regulation numbering

Comment Codes: I-1-4 and I-1-18

Comment Summary: Commenter believes that the authorities cited within the package are incorrect. They disagree that Public Resources Code sections 14536 and 40502 are relevant authority. Commenter thinks that Public Resources Code section 40502 only applies to the California Integrated Waste Management Board, which no longer exists, and not CalRecycle. They believe that Government Code section 11445 and Public Resources Code section 40501 are correct authorities. Commenter also thinks it would be more appropriate to place the proposed regulations in Article 2, Part 1, Division 3, Title 2 of the Government Code than in Chapter 1, Division 7, Title 14 of the California Code of Regulations.

CalRecycle's Response: Comment rejected. There is no Government Code section 11445. Commenter may be attempting to cite Article 10 of Chapter 4.5 of the Administrative Procedure Act (APA). 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 about 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 to APA adjudications (Gov. Code, § 11400 et seq.).

Comment about the amount of time it took to draft the proposed rules

Comment Code I-1-2

Comment Summary: Commenter is displeased at the length of time it took CalRecycle to draft proposed hearing procedures.

CalRecycle's Response: 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.

Concern that the regulations eliminate terms and create confusion

Comment Code I-1-3

Comment Summary: Commenter feels that the proposed rules have eliminated clear and concise terms for different programs in attempting to create a uniform set of procedures. They want “a respondent [to] remain a respondent.”

CalRecycle’s Response: 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.

APA informal hearing process

Comment Code I-1-1

Comment Summary: Commenter discusses the regulations as a whole, and describes the informal hearing process under the APA as “Cheap Justice”. Commenter further provides an explanation to the origin of the informal hearing practice while detailing perceived constitutional inadequacies. Commenter continues to explain that CalRecycle has used the informal hearing process to eliminate an unacceptable amount of recyclers with no apparent standards. Commenter explains CalRecycle is attempting a more fair process, and declares that this is the first opportunity that the regulated community has had to ensure a more favorable process. Commenter closes this comment with a complaint about the Director being able to delegate their duties to designees.

CalRecycle’s Response: 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.

3. Comments Related to Specific Issues

CalRecycle received 54 comments that suggested regulatory changes that were related to specific issues. These comments and CalRecycle’s responses are summarized below under their respective subcategory.

Comments about citation to formal hearing codes

Comment Code I-1-5

Comment Summary: Commenter is confused by the citation to formal hearing codes.

CalRecycle's Response: 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.

Comments about specific terms or definitions

Comment Code I-1-6

Comment Summary: Commenter finds the definition of "case" confusing. They want the section to identify the process or reason for every CalRecycle decision. They believe the term "case" should reference "accusations." Commenter feels that definitions should be specific to individual programs.

CalRecycle's Response: 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.

Comment Code I-1-7

Comment Summary: Commenter finds the definition of "Discovery" beneficial because it refers to evidence that may not have been disclosed.

CalRecycle's Response: Comment rejected. No changes or alterations proposed.

Comment Code I-1-9

Comment Summary: Commenter dislikes the definition of "hearing" because it includes the word "case." They want the section rewritten to define what constitutes the "merits of the case" or eliminated.

CalRecycle's Response: 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.

Comment about using the term "CHO" in the definition of the term "Record"

Comment Code I-1-10

Comment Summary: Commenter feels that the reference to “CHO” in the definition of “Record” should be replaced with “Hearing Officer.”

CalRecycle’s Response: 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.

Comment about the term “Relevant Evidence”

Comment Code I-1-11

Comment Summary: Commenter believes that the definition of relevant evidence is incorrect because it does not reference “statutory rules of evidence.” Commenter also makes claims about the qualifications of hearing officers, addressed below in the section on Presiding Officers.

CalRecycle’s Response: Comment rejected. Commenter misunderstands the evidentiary standards that apply in APA hearings. Even in a 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).)

Comment about the term “Representative”

Comment Code I-1-12

Comment Summary: Commenter believes the definition of “representative” is incorrect because it contains the word “party.”

CalRecycle’s Response: 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.

Comment about the term “Respondent”

Comment Code I-1-13

Comment Summary: Commenter believes that the term “respondent” should be used instead of “party” in any regulations related to the Beverage Container Recycling Act.

CalRecycle’s Response: 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.

Comment that there should be a different pleading regulation for each program

Comment Code I-1-14

Comment Summary: Commenter feels it lacks clarity to have a uniform pleading standard applicable to all denials. They would like a different section written for every program to which the proposed rules apply.

CalRecycle’s Response: 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.

Concern that applicants bear the burden of proof in statement of issues cases

Comment Code I-1-15

Comment Summary: Commenter disagrees with the burden of proof for statements of issues. They think CalRecycle has bear the burden of proof in these cases based on unspecified statutes and regulations.

CalRecycle’s Response: 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.”].)

Concerns related to the 15-day deadline for filing a notice of defense

Comment Code O-2-2

Comment Summary: Commenter states that § 17063.4’s 15-day deadline to file a Notice of Defense is too short, particularly for small or rural operators. They request

extending the deadline to 30 days or allowing an automatic 15-day extension upon request.

Comment Code O-3-1

Comment Summary: Commenter expresses concern that the current 15-day deadline to respond to enforcement actions is too short, given the complexity of the issues involved. They recommend extending the response period to 30–60 days to allow for thorough internal review and coordination and suggest that deadline extensions be permitted for good cause.

Comment Code O-4-1

Comment Summary: Commenter wants CalRecycle to allow respondents 30 days, rather than 15, to request a hearing and submit a Notice of Defense. They argue that the proposed 15-day deadline shortens the current time under some existing regulations and would negatively impact due process across multiple CalRecycle programs. Commenter notes that a 30-day period aligns with timelines used by some other California environmental agencies. Commenter feels 30 days provides regulated entities sufficient time to prepare a defense.

Comment Code O-5-1

Comment Summary: Commenter expresses concern that the current 15-day deadline to respond to enforcement actions is too short, given the complexity of the issues involved. They recommend extending the response period to 30–60 days to allow for thorough internal review and coordination and suggest that deadline extensions be permitted for good cause.

Comment Code I-1-16

Comment Summary: Commenter believes 20 days is fairer than 15 days to submit a Notice of Defense.

CalRecycle's Response: 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.

Concerns related to the 90-day deadline for scheduling a hearing

Comment Code I-1-17

Comment Summary: Commenter believes that 90 days is too long of a deadline for when the hearing should be scheduled.

CalRecycle's Response: 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.

Concern about the qualifications of hearing officers

Comment Codes I-1-19 and I-2-2

Comment Summary: Commenter does not believe there are sufficient standards imposed on the adjudicator. They cite their prior experience where non-attorneys have performed the role of hearing officer in hearings conducted at different agencies. Commenter recognizes that CalRecycle currently uses designated attorneys to serve as hearing officers. They want the identities of Hearing Office staff included in the regulations, along with their qualifications. Commenter also wants to challenge the competency of the presiding officer and require she or he score over 90 percent on an unspecified test of laws.

CalRecycle's Response: 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.

Concern about prohibiting non-attorneys from engaging in ex-parte communications

Comment Codes: I-1-8 and I-1-20

Comment Summary: First, commenter agrees that the term “ex parte” needs to be defined. Second, they feel that requiring non-attorneys to comply with ex parte restrictions is unfair. Commenter recounts a story of when they were disciplined for violating ex parte rules. Commenter also does not think the hearing officer should be allowed to communicate with the Director before a decision.

CalRecycle’s Response: 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).)

Comment that CalRecycle should pay for interpretation

Comment Code I-1-21

Comment Summary: Commenter feels that CalRecycle should be responsible for providing interpretation services at hearings and respondents should only be responsible for the cost in the case of a default.

CalRecycle’s Response: 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.

Comment approving of discovery in informal hearings

Comment Code B-1-1

Comment Summary: Commenter approves of including discovery in the rules.

Comment Code I-1-22

Comment Summary: Commenter appreciates that discovery will be allowed in informal hearings. They note a prior experience where they were told discovery was not permitted. They feel defining discovery is beneficial.

CalRecycle's Response: 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.

Concern that discovery provision is not broad enough

Comment Code O-3-2

Comment Summary: Commenter objects to the proposed limits on discovery, arguing that jurisdictions need access to a broader range of materials to prepare a proper defense. They recommend expanding discovery rights and lowering the threshold for requesting additional materials beyond the "exceptional circumstances" standard.

Comment Code O-5-2

Comment Summary: Commenter objects to the proposed limits on discovery, arguing that jurisdictions need access to a broader range of materials to prepare a proper defense. They recommend expanding discovery rights and lowering the threshold for requesting additional materials beyond the "exceptional circumstances" standard.

CalRecycle's Response: Comments 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.

Comment that discovery should be one-sided and mandatory

Comment Code I-1-23

Comment Summary: Commenter believes that CalRecycle should be required to provide discovery at the same time as service of an accusation, without a request from the respondent. Commenter objects to CalRecycle having 30 days to provide discovery because they believe that hearings should be held within 20 days of a hearing request.

CalRecycle’s Response: 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.

Comment supporting public access

Comment Code I-1-24

Comment Summary: Commenter supports the public’s right to observe the hearing process.

CalRecycle’s Response: 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.

Comment supporting videoconference hearings

Comment Code I-1-25

Comment Summary: Commenter supports the use of videoconference to reduce the cost and burden on all participants.

CalRecycle's Response: 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.

Concern about lack of respondent permission

Comment Code I-1-26

Comment Summary: Commenter agrees that it may be beneficial to have some cases proceed using only written submissions. They argue this should only be allowed if the respondent gives permission.

CalRecycle's Response: 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.

Concern about evidentiary standards

Comment Code I-1-27

Comment Summary: Commenter believes that informal hearings lack the evidentiary standards of a court system. They find the proposed standard "burdensome and threatening" because the standard of proof is a preponderance of the law.

CalRecycle's Response: 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 *ibid.*) In doing so, the proposed rule is more protective of parties' rights than the current absence of evidentiary standards and rules in informal hearings.

Requiring unrepresented respondents to adhere to the California Rules of Evidence would create a barrier to access and undue burden on those without legal counsel.

The "preponderance of the evidence" standard is the default in California unless otherwise specified. (Evid. Code, § 115.) It means the party with the burden of proof must provide evidence that a fact is more likely true than not.

Comment opposing oversight of withheld privileged evidence

Comment Code O-4-2

Comment Summary: Commenter opposes proposed section 17063.21(d), which allows the presiding officer to privately review privileged documents withheld by a party. They argue this practice undermines fairness and due process, conflicts with Government Code § 11445.60, subdivision (a), and risks improper disclosure or use of privileged information. Commenter recommends revising the rule to prohibit compelled disclosure of privileged materials and to avoid any appearance of bias or misuse in enforcement proceedings.

CalRecycle's Response: Comment rejected. This provision is modeled after the procedures in Gov. Code section 11507.7, subdivisions (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, subd. (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.

Concern about the weight given to weaker and less satisfactory evidence

Comment Code I-1-28

Comment Summary: Commenter feels the section regarding weaker and less satisfactory evidence permits inaccurate judgments by hearing officers that commenter believes to be unqualified.

CalRecycle's Response: 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.

Comments about the timeline for issuing a decision

Comment Code I-1-29

Comment Summary: Commenter believes that decisions should be issued within 30 days of the hearing's conclusion. They argue that an unspecified "existing standard" requires their preferred timeline.

CalRecycle's Response: 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.

Comments wanting stakeholder involvement in designation of precedential decisions

Comment Code O-2-6

Comment Summary: Commenter recommends that CalRecycle increase transparency by publishing anonymized precedent decisions. They also propose creating an external advisory panel to review the reasonableness of penalty amounts before they are finalized.

Comment Code O-3-3

Comment Summary: Commenter is concerned that CalRecycle's authority to designate decisions as precedent could have broad policy implications. They recommend providing public notice and an opportunity for comment before making such designations and consultation with affected jurisdictions.

Comment Code O-5-4

Comment Summary: Commenter is concerned that CalRecycle's authority to designate decisions as precedent could have broad policy implications. They recommend providing public notice and an opportunity for comment before making such designations and consultation with affected jurisdictions.

CalRecycle's Response: Comments 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.

Comments about wanting all decisions published

Comment Code I-1-30

Comment Summary: Commenter wants all decisions published for transparency and education purposes.

CalRecycle's Response: 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>.)

Comment supporting judicial review

Comment Code I-1-31

Comment Summary: Commenter supports the ability to seek judicial review.

CalRecycle's Response: 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.

Comment wanting automatic stays in all cases

Comment Code O-2-3

Comment Summary: Commenter expresses concern that section 17063.29 allows enforcement actions to continue during judicial review, potentially causing financial harm. They request an automatic stay of payment holds, penalties, and certification suspensions upon filing a Notice of Defense, unless CalRecycle makes a written finding of immediate harm to the fund.

CalRecycle's Response: Comment rejected. Proposed rule 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 that CalRecycle should pay the cost for recordings and transcripts

Comment Codes: I-1-32 and I-1-33

Comment Summary: Commenter believes that both recordings and transcriptions should be required in hearings. They feel that it is burdensome for a respondent to make a recording. Commenter further wants CalRecycle to obtain the first copy of a court reporter transcript to reduce costs and burdens for respondents.

CalRecycle's Response: 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.

Concern that sanctions discourage good-faith advocacy

Comment Code O-5-3

Comment Summary: Commenter feels that allowing sanctions for frivolous or bad-faith actions could discourage legitimate advocacy in highly technical or unsettled areas of law. They want a carve-out that good-faith legal or factual disagreements regarding the implementation of new laws is not sanctionable.

CalRecycle's Response: 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.

Comment that amicus briefs should be allowed without permission by the presiding officer

Comment Code I-1-34

Comment Summary: Commenter believes any interested party should be allowed to file an amicus brief and should not need the presiding officer's permission. They also feel that an unspecified section needs a definition and claim that presiding officer is not defined.

CalRecycle's Response: 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 amicus brief is capable of adding value in that specific case.

Concerns about Due Process and the proposed regulations

Comment Code I-1-35

Comment Summary: Commenter objects to the removal of specified regulation sections and asserts that this could allow the department to include sections that are not authorized and adopted.

CalRecycle's Response: Comment rejected. The listing of particular regulation sections was inconsistent with Public Resources Code section 14591.1, subdivision (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.

Comment Code I-1-36

Comment Summary: Commenter suggests that Public Resources Code section 14591.1 requires a formal hearing under Chapter 5 of the APA for violations of \$5,000, and that this regulation as amended is beyond the scope of the statute.

CalRecycle's Response: Comment rejected. CalRecycle respectfully points to Public Resources Code section 14591.1, subdivision (a)(2), which permits CalRecycle to assess a penalty in an amount equal to or less than \$5,000 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.

Comment Code I-1-37

Comment Summary: Commenter objects to the reference to section 17063.3 in place of having the citation requirements repeated or listed in the amended section 2100, and asserts that this violates the clarity standard and is burdensome to the regulated public.

CalRecycle's Response: 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.

Comment Code I-1-39

Comment Summary: Commenter recommends that the Notice of Violation should be issued at the site and at the time it occurred because Certified Operators must have prompt feedback to any deficiencies found by the Division of Recycling.

CalRecycle's Response: 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.

Comment Code I-1-40

Comment Summary: Commenter asserts that Public Resources Code section 14530.5, subdivision (b) is inapplicable and is an improper authority citation by saying that this statutory section pertains to the department's use of outside services and contractors.

CalRecycle's Response: Comment rejected. Public Resources Code section 14530.5, subdivision (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.

Comments about choice of terms or process

Comment Code I-1-41

Comment Summary: Commenter objects to the removal of "Operator of record" as to whom Notice of adjudication proceedings will be brought against.

CalRecycle's Response: Comment rejected. Persons and entities that are subject to the Act and its regulations include respondents who are not operators of record. (See Pub. Res. Code, § 14595.5.)

Comment Code I-1-42

Comment Summary: Commenter recommends deletion of subdivision (c) as it may result in respondents participating in an informal hearing when a formal hearing may be required.

CalRecycle's Response: 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.

Hearings for stewardship plans

Comment Code I-1-43

Comment Summary: Commenter agrees that parties involved in stewardship plans deserve a right to an informal hearing.

CalRecycle's Response: Comment rejected. Commenter fails to propose any edits or alterations to the proposed regulations.

Hearings for dealer cooperatives

Comment Code I-1-44

Comment Summary: Commenter believes the section lacks clarity but supports the right to informal hearings for dealer cooperatives.

CalRecycle's Response: Comment rejected. Commenter fails to identify what aspect of the proposed regulation they found unclear or propose a suggested alteration.

Concern about omitted language

Comment Code I-1-45

Comment Summary: Commenter feels the proposed regulation should be rejected because the proposed regulation does not include the subdivisions of the existing regulation that will not be amended by the rulemaking. They also note that the change to subdivision (d) removes the reference to the Board and Director.

CalRecycle's Response: 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.

Concern about inconsistent language

Comment Code O-4-3

Comment Summary: Commenter argues that CalRecycle should revise the proposed language in section 18975.1, subdivision (b) to maintain consistency with the enforcement framework established by SB 212. The proposed revision introduces the phrase “jurisdiction, person, and/or entity” when describing who may be served with a statement of charges, which commenter finds inconsistent with both existing regulatory language and the terminology used in SB 212. They recommend retaining the original terminology to ensure clarity and consistency.

CalRecycle’s Response: Comment accepted and adopted as a non-substantive change. CalRecycle will replace the words “jurisdiction, person, and/or entity” with “respondent” in proposed rule section 18975.1, subdivision (b), as requested by the commenter. “Respondent” was the term used in the regulation prior to CalRecycle’s proposed amendment and includes jurisdictions, persons, and entities who receive statements of charges.