

PROPOSED REGULATION TEXT

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CALIFORNIA CODE OF REGULATIONS

Note: Amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text.

ARTICLE 2.1. Electronic Waste Payment System — Applications for Approval

Section 18660.19. Request for Reconsideration, Appeal of Denial, Suspension or Revocation of Approval.

(a) If CalRecycle denies an application for approval or suspends or revokes an approval, the collector, recycler, or dual entity may request reconsideration of a denied application or application renewal, suspension, or revocation by submitting a written request for reconsideration electronically to ewasteapplications@calrecycle.ca.gov, within 30 calendar days of the date the notice of suspension, revocation, or denial of the application or application renewal is electronically mailed to the participant. The request for reconsideration shall be titled: "Request for Reconsideration".

(1) Any request for reconsideration received by CalRecycle after 30 calendar days from the date the denied application or application renewal, suspension, or revocation is electronically mailed to the participant shall be denied without reconsideration and CalRecycle's determination to deny the application or renewal, suspension, or revocation may not be appealed pursuant to this section.

(2) A request for reconsideration shall include all of the following information. CalRecycle shall deny the request for reconsideration if a recycler fails to provide the following information:

(A) The collector's, recycler's, or dual entity's name, mailing address, contact name and daytime telephone number.

(B) The type of approval: collector, recycler or dual entity.

(C) Physical address.

(D) A statement, which may include providing supporting documentation, of the basis for objecting to the denial, suspension or revocation.

(E) A copy of CalRecycle's determination letter for the denied application or application renewal, suspension, or revocation.

(b) The collector, recycler, or dual entity may appeal CalRecycle's denial of the application or application renewal, suspension, or revocation within 30 calendar days from the date of CalRecycle's determination of the request for reconsideration is electronically mailed to the participant. Any appeal received by CalRecycle after 30 calendar days from the date of CalRecycle's determination of the request for reconsideration shall be denied without a hearing or consideration of the appeal.

(c) The appeal provided for in this Section is also governed by the general administrative adjudication provisions of the California Administrative Procedure Act, found at Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400. This appeal is not subject to the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11500.

(d) The collector, recycler, or dual entity must submit the appeal electronically in writing to ewasteapplications@calrecycle.ca.gov. The collector, recycler, or dual entity shall title the appeal with: "Covered Electronic Waste Application Appeal Enclosed".

(e) In an appeal, a collector, recycler, or dual entity shall include, at a minimum, all of the following information. CalRecycle shall deny the appeal if a collector, recycler or dual entity fails to provide the following:

(1) The collector, recycler or dual entity's name, mailing address, contact name and daytime telephone number.

(2) The type of approval: collector, recycler, or dual entity.

(3) The location and street address.

(4) The date on the notification from CalRecycle and the stated reasons for denial, suspension or revocation.

(5) A statement, which may include providing supporting documentation, of the basis for objecting to the denial, suspension or revocation.

(6) A copy of CalRecycle's reconsideration determination letter.

(f) At any time, after filing an appeal and before a decision is issued, CalRecycle, and the collector, recycler, or dual entity may engage in alternative dispute resolution, consistent with the provisions of Government Code Section 11420.10.

(g) CalRecycle shall provide a hearing before the director, or his or her designee, who shall act as a hearing officer. The hearing officer shall consider the application, the reasons for denial, suspension or revocation, and any additional relevant information presented by the collector, recycler, or dual entity or CalRecycle staff. The hearing officer shall issue a written decision stating the factual and legal basis for the decision.

(h) The hearing officer will notify the collector, recycler or dual entity of the determination in writing within 20 calendar days from the date of the decision.

(i) Hearings held pursuant to this section are excluded from all regulations and procedures set forth in Chapter 1, Article 6 of Division 7 of Title 14 of the California Code of Regulations.

Authority cited: Sections 40502, 42475 and 42475.2, Public Resources Code.
Reference: Sections 42463, 42474 and 42479, Public Resources Code; and Sections 11400.20 and 11415.10, Government Code.

ARTICLE 2.3. Electronic Waste Payment System — Recycling Payment Claims

Section 18660.31. Request for Reconsideration, Appeal of Denied or Adjusted Recycling Payment Claims.

(a) An approved recycler or dual entity may request reconsideration of a denied or adjusted claim by submitting a written request for reconsideration electronically to ewasteclaims@calrecycle.ca.gov within 30 calendar days of the date of the notice denying or adjusting the claim. The recycler shall title the electronic request with: "Request for Reconsideration".

(1) Any request for reconsideration received by CalRecycle after 30 calendar days from the date of the claim denial or adjustment from CalRecycle shall be denied without reconsideration of the claim denial or adjustment and the claim denial or adjustment may not be appealed.

(2) An approved recycler or dual entity shall include all of the following information in a request for reconsideration:

(A) The approved recycler's or dual entity's name and Proof of Approval identification number.

(B) The month(s) and year(s) of the recycling payment claim.

(C) A copy of CalRecycle's determination letter denying or adjusting the claim.

(D) An explanation, which may include providing supporting documentation, of why the adjustment or denial was in error.

(3) CalRecycle shall deny the request for reconsideration if an approved recycler or dual entity fails to provide the information requested in subsection (2).

(4) CalRecycle shall have 30 calendar days from the electronic submission date of the request for reconsideration to reconsider the claim adjustment or denial and shall notify the approved recycler or dual entity of its determination. The approved recycler or dual entity and CalRecycle may agree in writing to extend this timeline.

(b) The approved recycler or dual entity may appeal CalRecycle's claim adjustment or denial within 30 calendar days from the date of CalRecycle's determination of the request for reconsideration. Any appeal received by CalRecycle after 30 calendar days

from the date of CalRecycle's determination of the request for reconsideration shall be denied without a hearing or consideration of the appeal.

(c) An approved recycler or dual entity shall include all of the following information in a written appeal submitted electronically to CalRecycle at ewasteclaims@calrecycle.ca.gov. CalRecycle shall deny the appeal if an approved recycler or dual entity fails to provide the following information:

(1) The approved recycler's or dual entity's name and Proof of Approval identification number.

(2) The month(s) and year(s) of the recycling payment claim.

(3) A copy of CalRecycle's determination letter denying or adjusting the recycling payment claim.

(4) An explanation, which may include providing supporting documentation, of why the adjustment or denial was in error.

(5) A copy of CalRecycle's reconsideration determination letter.

(d) At any time after filing a claim appeal and before a decision is issued, CalRecycle and the approved recycler or dual entity may engage in alternative dispute resolution, consistent with the provisions of Government Code Section 11420.10.

(e) CalRecycle shall provide a hearing before the director, or his or her designee, who shall act as a hearing officer. The hearing officer shall consider the claim, the reasons for payment denial or payment adjustment, and any additional relevant information presented by the approved recycler or dual entity or CalRecycle staff. The hearing officer shall issue a written decision stating the factual and legal basis for the decision.

(f) In hearings held pursuant to this section, the appellant has the burden to prove by preponderance of the evidence that it has complied with all applicable laws and regulations thereby entitling the appellant to payment on the recycling claim.

(fg) The hearing officer will notify the approved recycler or dual entity of the determination in writing within 20 calendar days from the date of the decision.

(gh) This appeal provided for in this Section is also governed by the general administrative adjudication provisions of the California Administrative Procedure Act, found at Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400. This appeal is not subject to the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11500.

(i) Hearings held pursuant to this section are excluded from all regulations and procedures set forth in Chapter 1, Article 6 of Division 7 of Title 14 of the California Code of Regulations.

Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.
Reference: Sections 42463, 42474(e)(3), 42476 and 42479, Public Resources Code;
and Sections 11400.20 and 11415.10, Government Code.

ARTICLE 6. ADMINISTRATIVE CIVIL PENALTIES

Section 18660.44. Procedure for Imposing Civil Liabilities for False Statements or Representations.

(a) Administrative civil penalties authorized by Public Resources Code Section 42474(d) shall be assessed in accordance with the procedures set forth in this Section.

(b) The penalties shall be assessed as follows:

(1) A "Minor" violation means first-time violations where the gravity of the violation is severe. The penalties for this type of violation shall be no less than five hundred dollars (\$500) and no more than four thousand dollars (\$4,000).

(2) A "Moderate" violation means subsequent or multiple violations occurring at one time. The penalties for this type of violation shall be no less than four thousand dollars (\$4,000) and no more than fifteen thousand dollars (\$15,000).

(3) A "Major" violation means violations that indicate a pattern and practice of noncompliance, or intentional violations. The penalties for this type of violation shall be no less than fifteen thousand dollars (\$15,000) and no more than twenty-five thousand dollars (\$25,000).

(c) CalRecycle shall consider any or all of the following when imposing an administrative civil penalty:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) The value of the actual or potential economic benefit to the violator associated with the violation;

(3) The amount of actual or potential harm to CalRecycle

(4) Any prior history of noncompliance with this Chapter, including but not limited to any prior violations of a similar nature;

(5) Truthful and forthright cooperation during any relevant investigation, including but not limited to any measures taken by the violator to remedy the current violation or prevent future violations;

(6) The violator's ability to pay the proposed penalty;

(7) The deterrent effect that the imposition of the proposed penalty would have on the community as a whole and the violator; and

(8) Any other matters that justice may require.

(d) In any case in which it is determined that more than one person or entity is responsible and liable for a violation, each such person may be held jointly and severally liable for an administrative civil penalty.

(e) Prior to the issuance of an accusation, CalRecycle may issue a written notice of violation (NOV). A NOV shall not be issued in the event of a violation that indicates a pattern and practice of noncompliance, or an intentional violation.

(1) The NOV shall allege with specificity the following:

(A) A description of the violation or violations;

(B) The potential penalty amount;

(C) The facts considered in determining the type of violation and potential penalty amount;

(D) The corrective action(s) to be taken by the violator; and

(E) An acknowledgement of receipt and review to be executed by the violator.

(2) The NOV and all accompanying documents shall be served by certified mail or personal service.

(f) CalRecycle shall issue an accusation, as defined in Government Code Section 11503, seeking an administrative penalty or penalties pursuant to this Section. The accusation and all accompanying documents shall be served by personal service or registered mail.

(g) Within fifteen (15) days after service upon the respondent of the accusation seeking any administrative civil penalty, respondent may request a hearing by filing a Notice of Defense pursuant to Government Code Sections 11505 and 11506. The request for hearing may be made by delivering or mailing the Notice of Defense to CalRecycle. Failure to file a Notice of Defense within fifteen (15) days of service of the accusation shall constitute a waiver of the respondent's right to a hearing and CalRecycle may proceed upon the accusation without a hearing.

(h) CalRecycle shall provide a hearing before the director or his or her designee, who shall act as hearing officer. At any time during the proceeding, before a decision is issued, CalRecycle and the respondent(s) may engage in settlement of the matter.

(i) The hearing officer shall consider the NOV (if applicable), the accusation, the Notice of Defense, and all other relevant evidence presented by CalRecycle and the respondent. The hearing officer shall specify relevant procedures to be conducted during the proceeding, which include but are not limited to, informing the parties as to whether the hearing officer will consider witness testimony, and whether there shall be written or oral arguments. The hearing officer shall issue a written decision stating the factual and legal basis for the decision within thirty (30) days of the hearing. If the hearing officer determines that any penalties are owed, the hearing officer shall include

in the written decision the date payment of the assessed penalties shall be due and paid.

(j) The respondent's failure to comply with the hearing officer's written decision may be grounds for suspension or revocation of their status as an approved collector or approved recycler.

(k) Except as otherwise specified herein, the hearing shall be governed by the informal administrative hearing procedures in Chapter 4,5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400. The hearing shall take place in Sacramento, California unless a location is otherwise specified by the hearing officer. If respondent wishes to request an alternate location, the respondent must make that request in the Notice of Defense and provide a justification of undue burden.

(l) Penalties assessed in a hearing officer's decision may be in addition to any adjustments made pursuant to Section 18660.30 and may be offset by CalRecycle against any other amounts that are otherwise due to the respondent(s) for payment claims. In the event of settlement, the parties may agree to offset provisions in the settlement agreement.

(m) Hearings held pursuant to this section are excluded from all regulations and procedures set forth in Chapter 1, Article 6 of Division 7 of Title 14 of the California Code of Regulations.

Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.
Reference: Sections 42474, 42476, 42477, 42478 and 42479, Public Resources Code.

Section 18660.45. Procedure for Imposing Civil Liabilities for Failure to Pay a Covered Electronic Waste Recycling Fee.

(a) The administrative procedure set forth in Section 18660.44(c)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(a).

(b) The hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400.

(c) Hearings held pursuant to this section are excluded from all regulations and procedures set forth in Chapter 1, Article 6 of Division 7 of Title 14 of the California Code of Regulations.

Authority cited: Sections 40502, 42475(b) and 42475.2, Public Resources Code.
Reference: Sections 42474, 42476, 42477, 42478 and 42479, Public Resources Code.

Section 18660.46. Procedure for Imposing Civil Liabilities for Failure to Comply with Requirements for Manufacturers.

(a) The administrative procedure set forth in Section 18660.44(b)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(c).

(b) The hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400.

(c) Hearings held pursuant to this section are excluded from all regulations and procedures set forth in Chapter 1, Article 6 of Division 7 of Title 14 of the California Code of Regulations.

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

Reference: Sections 42474, 42476, 42477, 42478 and 42479, Public Resources Code.