

PROPOSED REGULATION TEXT

Responsible Battery Recycling Act Permanent Regulations
Division of Circular Economy

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
CALIFORNIA CODE OF REGULATIONS

Note: All text is added text to title 14, division 7 of the California Code of Regulations.

TITLE 14

DIVISION 7

CHAPTER 11

ADOPT

ARTICLE 5: Battery Stewardship Program

Adopt sections, 18976, 18976.1, 18976.2, 18976.3, 18976.4, 18976.5, 18976.6, 18976.7, 18976.8, 18976.9, 18976.10, 18976.11, 18976.12, 18976.13, 18976.14, 18976.15, and 18976.16. California Code of Regulations, title 14.

ARTICLE 5: Battery Stewardship Program

Section 18976. Definitions

(a) Except as otherwise noted, the following definitions shall govern the provisions of this Article and supplement the definitions set forth in Chapter 7.5 (commencing with section 42420), Part 3, Division 30 of the Public Resources Code:

(1) "Act" means the Responsible Battery Recycling Act of 2022, Chapter 7.5 of Part 3 of Division 30 of the Public Resources Code (sections 42420 through 42428).

(2) "All administrative and operational costs" as identified in section 42423.1 of the Public Resources Code include all sub-groupings of costs and expenses listed in section 18976.3(a)(4)(A).

(3) "Battery" as it pertains to the Act and this Article means a device that consists of one or more electrically connected electrochemical cells and primarily serves the purpose of a covered battery set forth in subdivision (d) of section 42420.1:

(A) The presence of the following shall not prohibit a device from being considered a battery:

(i) Components that regulate or manage the reception, storage, or transmission of electric energy or charge, such as battery management systems, voltage converters, or step-up transformers,

(ii) A display demonstrating the device's condition, such as its level of charge or temperature,

(iii) A button, switch, or similar component that activates or deactivates the device,

(iv) Wires or connection ports that allow power to be received by the device from the electrical source or delivered from the device to a product,

(v) A component that supports the device, such as a stand or a suspension clip,

(vi) Tape, soldering, or protective casings designed to organize or protect the cells and the components identified in this sub-paragraph.

(B) Power banks, as defined in section 18976(a)(17), are batteries. A power bank shall not be prevented from being considered a battery if it can perform a secondary function but still primarily serves the purpose of a covered battery set forth in subdivision (d) of section 42420.1. Examples of such secondary functions include:

(i) Shining light from a bulb in the power bank,

(ii) Playing music from speakers in the power bank, and

(iii) Generating energy from a solar panel on the power bank.

(4) "Brand" has the same meaning as subdivision (a) of section 42420.1 of the Public Resources Code, and:

(A) A brand can identify an owner or licensee directly or indirectly. A brand identifies its owner or licensee indirectly when it signifies the owner or licensee of the brand.

(B) Where a trademark is placed on a covered battery, that trademark shall be the brand of the battery. That trademark shall remain the brand even if the battery is later associated with a product in the state.

(C) If there is no trademark placed on the battery, and the battery is sold in or into the state at any point without being associated with a product, the brand shall be determined according to the priority set forth in this subparagraph. The brand assigned in this manner shall remain the brand even if the battery is later associated with a product in the state.

(i) The trademark occurring:

(I) On the website description, if sold through a website.

(II) On the packaging.

(III) In documents associated with the batteries, such as invoices.

(ii) A logo, a name, a symbol, a word, an identifier, or a traceable mark that qualifies as a brand but not as a trademark which occurs:

(I) On the website description, if sold through a website.

(II) On the battery.

(III) On the packaging.

(IV) In documents associated with the batteries, such as invoices.

(D) Where a battery is associated with a product prior to import into the state and there is no trademark placed on the battery, the brand shall be determined according to the following priority:

(i) The trademark occurring:

(I) On the website description, if sold through a website.

(II) On the packaging.

- (III) In documents associated with the product, such as invoices.
- (ii) A logo, a name, a symbol, a word, an identifier, or a traceable mark that qualifies as a brand but not as a trademark which occurs:
 - (I) On the website description, if sold through a website.
 - (II) On the packaging of the product.
 - (III) In documents associated with the product, such as invoices.
 - (IV) On the battery itself.
- (5) “Brand registration date” means the date on which a brand is subject to an approved stewardship plan.
- (6) “Chemistry of the covered battery” means the specific combination of materials used in the cathode, anode, and electrolyte of the covered battery. Types of chemistry include, but are not limited to, lithium-ion, nickel-metal hydride, nickel-cadmium, alkaline, and small sealed lead-acid.
- (7) “Common household tools” means tools that are routinely used in households or that meet subparagraph (C).
 - (A) The following items are categorically considered to be common household tools:
 - (i) Flathead, crosshead, and Phillips screwdrivers;
 - (ii) Paper clips;
 - (iii) Coins; and
 - (iv) Hex keys.
 - (B) Common household tools do not include the following items:
 - (i) Hammers, mallets, scissors, pliers, knives, ratchets, saws, chisels;
 - (ii) Screwdrivers with drive tips that are not available for purchase by the general public, only used for the products of a single manufacturer or brand, or have an active U.S. patent;
 - (iii) Tools that require the use of batteries, electricity, or fuel to power;
 - (iv) Tools that require the application of heat or solvents to separate a covered battery from a product.
 - (C) A key, application, or other locking device provided to the consumer by the producer of the product or battery that is warranted by the producer of the product or battery to serve solely to prevent theft of the battery or tampering by persons

other than the consumer and not to inhibit the consumer's ability to remove, replace, or recycle the battery shall be considered a common household tool.

(8) "Confidential proprietary" information shall, exclusively for the purposes of subdivision (e) of section 42424 of the Public Resources Code and section 18976.15(e)(1), only include information that satisfies all the criteria set forth in subparagraphs (A) through (D) of this paragraph:

(A) Commercial or financial.

(B) Privileged or confidential.

(C) Identified as such by the entity providing the information to the department.

(D) Not required to be publicly disclosed under any other law or any regulation.

(9) "Damaged or defective battery" means a battery that is corroded, cracked, broken, leaking, swollen, bloated, showing burn marks, emitting an odor, missing one or more components, or that has the potential of producing a dangerous evolution of heat, fire, or short circuit.

(10) A battery sold, distributed, or imported with a product is "designed to be easily removed from a product by the user of the product, with no more than common household tools" when the product is manufactured so that the included covered batteries can be removed by a consumer using the product using no more than common household tools except as otherwise provided herein.

(A) The following are examples of covered batteries that are designed to be easily removed:

(i) A battery that is marketed to be removed from a product by the consumer using common household tools.

(ii) A battery contained in a product that has a warranty or instructions acknowledging or permitting consumer battery removal using common household tools.

(iii) A battery that powers or charges the product, such as by physically abutting it or by the insertion of its cable into the product, and can be manually removed from the product without the use of any tools.

(iv) A battery that is not glued or otherwise secured within the product in a manner that requires more than common household tools or a trained technician to remove.

(B) A battery that cannot be removed by using a common household tool without voiding the product's warranty is an example of a battery that is not designed to be easily removed.

(C) A battery otherwise qualifying pursuant to these criteria as a loose battery designed to be easily removed from a product by the user of the product, with no more than common household tools, continues to qualify as such regardless of whether the battery is installed in the product or is packed together with, but not installed in, the product at the time of their sale, distribution, or importation.

(11) "DTSC" means the Department of Toxic Substances Control or a successor agency.

(12) "Electronic waste recycler" has the same meaning as "covered electronic waste recycler" pursuant to section 42463 of the Public Resources Code.

(13) "Household hazardous waste collection facility" has the same meaning as defined in subdivision (e) of section 25218.1 of the Health and Safety Code.

(14) "Participant deregistration date" means the date on which a producer that was once subject to an approved stewardship plan is no longer subject to an approved stewardship plan.

(15) "Participant registration date" means the date on which a producer is subject to an approved stewardship plan.

(16) "Permanent collection site" means a fixed location in the state where covered batteries may be dropped off at no cost during regular hours the location is open to the public or a permanent household hazardous waste collection facility as defined in subdivision (h) of section 25218.1 of the Health and Safety Code.

(A) "Regular hours" for permanent collection sites that are retailers means the days and hours the retailer sells covered batteries.

(17) "Power bank" means a portable and rechargeable battery that, when operating normally, can store energy and recharge the battery in a covered battery-embedded product as that term is understood pursuant to subdivision (f) of section 42463 of the Public Resources Code, such as a cellular phone, or recharge the battery in a product that has a removable battery, such as a camera.

(18) "Recalled battery" means a battery, identified by battery model, serial, batch, or lot numbers, that a producer has determined does not perform as expected or presents a safety hazard, and is listed online as recalled on a website of the producer, the manufacturer, a program operator, or a governmental entity with appropriate jurisdiction.

(19) "Service provider" means an entity that contracts with a program operator to provide services, including, but not limited to, collection, transportation, handling, processing, recycling, and disposal of covered batteries, and administration thereof.

(20) "Temporary collection site" means a non-permanent collection site location in the state where covered batteries may be dropped off at no cost.

(21) “Widespread access and convenience” occur when the program operator provides at least one permanent collection site within a 15-mile radius of at least 95 percent of California residents.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Sections 42420, 42420.1, 42420.2, 42420.3, 42420.4, 42421, 42421.2, 42422, 42422.1, 42422.3, 42422.4, 42422.5, 42422.6, 42423, 42423.1, 42424, 42424.1, 42424.4, 42425, 42425.1, 42425.2, 42425.3, 42425.4, 42426, 42427, 42428, and 42463, Public Resources Code; and Section 25218.1, Health and Safety Code.

Section 18976.1. Program Operator Submittals

(a) Lists of Covered Batteries and Brands

(1) In fulfillment of the list submittal requirements of subdivision (b) of section 42421, subdivision (a) of section 42422.1, and subdivision (f) of section 42424.1 of the Public Resources Code and in accordance with the timelines specified therein, program operator list submittals shall be electronically submitted to BatteriesEnforcement@CalRecycle.ca.gov in a spreadsheet or using CalRecycle’s designated electronic information submittal system, and include the following information in separate columns:

(A) Names and contact information of each producer participating in the program operators’ stewardship plan, including separate columns for:

- (i) Producer name.
- (ii) Contact name and title.
- (iii) Mailing street number and street name.
- (iv) Mailing city.
- (v) Mailing state.
- (vi) Mailing zip code.
- (vii) Physical street number and street name.
- (viii) Physical city.
- (ix) Physical state.
- (x) Physical zip code.
- (xi) Contact phone number.
- (xii) Contact email address.

(B) Each participant registration date.

(C) The brand or brands of the participating covered batteries for each producer.

(D) Each brand registration date.

(E) The covered battery type, primary or rechargeable, which, when combined with the brand indicated in subparagraph (C) of this paragraph, constitutes the combination of brand and covered battery referred to in subdivisions (c) and (d) of section 42425 of the Public Resources Code.

(2) Lists submitted to the department pursuant to this section shall be consistent with the standards set forth for state governmental agencies in section 7405 of the Government Code and the Web Content Accessibility Guidelines (WCAG) 2.2 published in 2024 by the World Wide Web Consortium at <https://www.w3.org/TR/WCAG22/>. The entirety of the Web Content Accessibility Guidelines (WCAG) 2.2 published in 2024 are incorporated by reference.

(3) A program operator shall provide the department with updates to its list within 60 calendar days of any changes to the information contained in that list. The update shall include a summary statement that identifies changes since the last list submission, including:

(A) The date the updated list is effective.

(B) The names of producers and brands added, and the participant registration dates and brand registration dates those producers and brands became registered participants of the stewardship program.

(C) The names of producers and brands removed, and the participant deregistration dates for those producers and brands which are no longer registered participants of the stewardship program.

(4) Failure to meet the requirements of this subdivision constitutes grounds for the department's rejection of the list.

(b) Stewardship Plans

(1) Program operators shall electronically submit stewardship plans in Portable Document Format to DTSC by email to CoveredBattery@DTSC.ca.gov and to the department by email to Batteries@CalRecycle.ca.gov. The date of electronic submittal to DTSC shall be considered the date of receipt by DTSC. The date of electronic submittal to the department shall be considered the date of receipt by the department.

(A) The program operator may elect to proceed with submitting a stewardship plan to the department for review even if it has been less than 150 calendar days since submitting a proposed stewardship plan to DTSC for review, if:

(i) A program operator does not receive a response from DTSC within 90 calendar days after submitting a plan to DTSC for review pursuant to paragraph (3) of subdivision (a) of section 42422.5 of the Public Resources Code; or

(ii) DTSC issues a determination of compliance pursuant to paragraph (4) of subdivision (a) of section 42422.5 of the Public Resources Code.

(2) Upon the submittal of a stewardship plan to the department, a program operator shall make the stewardship plan available to the public by posting the stewardship plan to its internet website. A program operator shall maintain approved stewardship plans on its internet website until a new plan is approved, or the plan expires or is revoked.

(3) The department shall approve the program operator's stewardship plan if both of the following criteria are satisfied:

(A) The stewardship plan was submitted in accordance with the requirements of section 42422.5 of the Public Resources Code and paragraphs (1) and (2) of this subdivision.

(B) The stewardship plan meets the requirements of section 42422.1 of the Public Resources Code and section 18976.3.

(4) Department disapproval of an initial stewardship plan or revised initial stewardship plan submitted by a program operator shall not cause execution of a contingency plan.

(c) Notice of Stewardship Program Implementation Status

(1) Within 12 months of approval by the department of an initial stewardship plan, a program operator shall electronically submit to the department by email to Batteries@CalRecycle.ca.gov a written notice in Portable Document Format that demonstrates that it has fully implemented its stewardship program pursuant to subdivision (a) of section 42422.6 of the Public Resources Code, or that explains the program's incomplete implementation. At a minimum, the notice shall contain the following information:

(A) A statement of the program operator's status regarding the implementation of the stewardship program within 12 months of stewardship plan approval.

(i) A program operator that has fully implemented its stewardship program shall certify its full implementation of its stewardship program.

(ii) A program operator that did not fully implement its stewardship program shall state that its program is not fully implemented, describe the stewardship program activities that are not fully implemented, and identify a timeline to fully implement those stewardship program activities.

(B) Contact information for each producer covered by the stewardship plan, consistent with the requirements in section 18976.1(a)(1).

(C) A list of operational collection sites participating in the stewardship program with the same format and information required in section 18976.3(a)(5)(C).

(D) A list of operational service providers involved in the process of managing covered batteries following collection, including, but not limited to, transporters, sorters, consolidation sites, reuse facilities, and recyclers, including the following information:

- (i) Business name.
- (ii) Mailing and physical address.
- (iii) Service(s) provided.

(E) The website address for the program operator's internet website that includes, at a minimum, a list of operational collection sites.

(2) Upon the submittal of a notice of full implementation to the department, a program operator shall make the notice available to the public by, at a minimum, posting the notice to its internet website. A program operator shall maintain a notice of full implementation on its internet website for at least 180 calendar days following submission to the department or upon submission of the next annual report to the department, whichever date is earlier.

(d) Annual Reports

(1) Program operators shall electronically submit annual reports in Portable Document Format to the department by email to Batteries@CalRecycle.ca.gov on or before June 15 of each year after department approval of the initial stewardship plan. The date of electronic submittal will be considered the date of receipt by the department.

(2) Upon the submittal of an annual report to the department, a program operator shall make the annual report available to the public by, at a minimum, posting the annual report to its internet website. A program operator shall maintain an annual report on its internet website until the department notifies the program operator if the annual report is compliant or noncompliant or a revised annual report is submitted to the department and posted on the program operator's internet website.

(3) An annual report submitted to the department and posted online pursuant to this section shall be consistent with the standards set forth for state governmental agencies in section 7405 of the Government Code and the Web Content Accessibility Guidelines (WCAG) 2.2 published in 2024 by the World Wide Web Consortium at <http://www.w3.org/TR/WCAG22/>. The entirety of the Web Content Accessibility Guidelines (WCAG) 2.2 published in 2024 are incorporated by reference.

(4) The department's 120-day annual report review period specified in subdivision (a) of section 42424.4 of the Public Resources Code excludes any duration of time the department takes to consult with DTSC pursuant to subdivision (c) of section 42424.4 of the Public Resources Code, including any time that DTSC takes to review an annual report. The department shall electronically notify the program operator's contact identified pursuant to section 18976.7(a)(2)(A) when the department's review may

exceed 120 calendar days from receipt of the annual report due to consultation with DTSC.

(5) The department shall review any proposed stewardship plan modifications or revisions a program operator includes in its annual reports pursuant to subdivision (u) of section 42424.1 of the Public Resources Code and notify the program operator whether it can proceed with implementing the proposed modifications or revisions or if the proposed modifications or revisions require any of the following:

(A) Submission of a revised stewardship plan.

(B) Submission of an amendment to its stewardship plan.

(C) Submission of additional information to corroborate or clarify the proposed stewardship plan modifications or revisions.

(6) The department shall find that an annual report fails to meet the requirements of section 42424.1 of the Public Resources Code and is noncompliant when either of the following occurs:

(A) The program operator omits required information or provides erroneous information that prevents the department from ascertaining, to the extent such a determination could be made by evaluation of a complete and correct annual report provided pursuant to section 42424.1 of the Public Resources Code and section 18976.7, that the program operator is providing free-at-drop-off, convenient, and safe collection, transportation, recycling, and otherwise proper management of covered batteries.

(B) The program operator provides information pursuant to section 42424.1 of the Public Resources Code and section 18976.7 identifying program deficiencies that, taken as a whole, jeopardize the free-at-drop-off, convenient, and safe collection, transportation, recycling, and otherwise proper management of covered batteries. In reaching its determination, the department shall consider the magnitude and the duration of the deficiency and the likelihood of the program operator's remedial actions to cure the deficiency successfully.

(7) The department shall include in its notification to the program operator, pursuant to subdivision (b) of section 42424.4 of the Public Resources Code, whether the program operator is required to submit a revised annual report.

(e) Five-Year Stewardship Plan Review

(1) No less than one year prior to a program operator's stewardship plan review deadline, a program operator shall notify the department in writing by email in Portable Document Format to Batteries@CalRecycle.ca.gov whether it intends to submit a revised stewardship plan or believes revisions to its stewardship plan are not necessary. The program operator's statement of intention does not bind the program operator from deciding to pursue a different course of action in the future. Prior to

notifying the department, the program operator shall engage in a consultative process with the advisory body to receive advice on the implementation of the stewardship plan and any potential updates to the stewardship plan.

(2) If a program operator determines, upon review of its stewardship plan, that revisions to the plan are necessary pursuant to subdivision (b) of section 42422.3 of the Public Resources Code, it shall electronically submit a revised stewardship plan in Portable Document Format to the department by email to Batteries@CalRecycle.ca.gov for review no less than 90 calendar days prior to the review deadline and shall include a cover letter that certifies that it reviewed the entirety of the plan and describes what revisions were made to the stewardship plan compared to its prior stewardship plan.

(3) The department shall approve a revised stewardship plan if both of the following criteria are satisfied:

(A) The revised stewardship plan was submitted in accordance with the requirements of section 42422.5 of the Public Resources Code and paragraph (2) of this subdivision.

(B) The revised stewardship plan meets the requirements of section 42422.1 of the Public Resources Code and section 18976.3.

(4) Upon the submittal of a revised stewardship plan to the department, a program operator shall make the revised plan available to the public by posting the revised plan to its internet website. A program operator shall maintain approved stewardship plans on its internet website until a new plan is approved, or the plan expires or is revoked.

(5) If a program operator determines upon review of its stewardship plan at least every five years, that revisions are not necessary pursuant to subdivision (c) of section 42422.3 of the Public Resources Code, it shall electronically submit a letter to the department by email to Batteries@CalRecycle.ca.gov that includes an explanation of the basis for its determination.

(A) The department shall consult with or submit the program operator's letter to DTSC.

(B) The duration of time the department takes for the consultation shall not count toward its 30-day time limit to disapprove the program operator's determination.

(6) Department disapproval of a revised stewardship plan resubmitted by a program operator, or failure to resubmit a revised stewardship plan pursuant to subdivision (c) of section 42422.5 of the Public Resources Code, constitutes grounds for revocation of the stewardship plan pursuant to section 18976.6.

(7) If a program operator determines at any time that proposed stewardship program modifications necessitate amendments to its stewardship plan to achieve the requirements established pursuant to section 42422.1 of the Public Resources Code,

but do not warrant an entire revised stewardship plan, it shall electronically submit the proposed plan amendments to the department by email to Batteries@CalRecycle.ca.gov for review.

(A) Upon the submittal of a stewardship plan amendment to the department, a program operator shall post the plan amendment to its internet website. A program operator shall maintain any approved plan amendments on its internet website until a new stewardship plan is approved, or the plan, and associated amendments, expire or are revoked.

(B) The department shall approve, disapprove, or conditionally approve the plan amendment in a manner consistent with the review process specified in subdivision (b) of section 42422.5 of the Public Resources Code and provide written notice to the program operator of its decision.

(f) Penalty of Perjury

(1) All documents created and submitted by program operators to the department shall be provided to the department under penalty of perjury. A party who is responsible for the contents of the document shall sign the document and provide the following certification statement: "I am authorized to sign this document by the program operator, I am responsible for its contents, and I hereby declare, under penalty of perjury, that the information provided in this document is true and correct, to the best of my knowledge."

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Sections 42421, 42422.1, 42422.3, 42422.5, 42422.6, 42424.1, 42424.4, and 42425, Public Resources Code; and Section 7405, Government Code.

Section 18976.2. Convenient Collection System

(a) Permanent collection sites that are not permanent household hazardous waste collection facilities shall not be required by the program operator to accept more covered batteries than can fit in a two-gallon container from a single consumer in a single day.

(b) Permanent household hazardous waste collection facilities shall not be required by the program operator to accept more covered batteries than can fit in a 15-gallon container from a single consumer in a single day.

(c) Collection sites shall not be required by the program operator to accept battery-embedded products, non-removable batteries contained in electronic devices, or any other products that are not a covered battery as defined in subdivision (d) of section 42420.1 of the Public Resources Code.

(d) For the purposes of demonstrating achievement of the convenient collection system requirements established pursuant to paragraph (1) of subdivision (d) of section 42422.1 of the Public Resources Code:

(1) The program operator shall satisfy the minimum numeric requirements for collection sites in each county with at least 90 percent of those identified collection sites being permanent collection sites.

(2) Once the minimum numeric requirements for collection sites in each county identified are achieved pursuant to paragraph (1) of this subdivision, the program operator may maintain additional temporary collection sites and the existence of such additional temporary sites shall not affect the percentage calculated pursuant to paragraph (1).

(e) A program operator shall not prohibit collection sites that participate in its stewardship program from also participating as a collection site for another program operator.

(f) A program operator shall not collect covered batteries at a collection site in the same container where another program operator collects covered batteries.

(g) Collection sites shall not be required to maintain collection containers in a publicly accessible space or allow consumers to drop off covered batteries directly into collection containers, provided that the collection site displays signage instructing consumers as to how they can drop off covered batteries at no cost at the collection site. Signage must be displayed at entrances, points of sale, or other locations that consumers can see when they are in or approaching the collection site.

Authority cited: Sections 40401, 40502, 42420.2, and 42420.3, Public Resources Code.
Reference: Sections 42420.1 and 42422.1, Public Resources Code.

Section 18976.3. Stewardship Plans

(a) A program operator shall submit a complete stewardship plan to the department that memorializes the program operator's affirmation of obligations it assumes as a program operator, proposes the method by which it will satisfy the affirmative responsibilities set forth herein, and provides the information required pursuant to section 42422.1 of the Public Resources Code, and by this Article, including:

(1) Contact Information and Business Organization

(A) Contact information for the corporate officer, or designee, responsible for submitting and overseeing the stewardship plan on behalf of the program operator, including, but not limited to:

- (i) Name of the program operator.
- (ii) Contact name and title.
- (iii) Mailing and physical address(es).
- (iv) Telephone number.
- (v) Contact email address.

(vi) Internet website address.

(B) Contact information for each producer covered by the stewardship plan, consistent with the requirements in section 18976.1(a)(1).

(2) Stewardship Organization Composition and Control

(A) The stewardship program shall explain how it is organized and its connection to related organizations, as that term is understood pursuant to Schedule R of the Internal Revenue Service Form 990, its instructions, and Instructions for Form 990 Return of Organization Exempt from Income Tax.

(B) Except as otherwise provided in subparagraph (C), a stewardship organization shall not be considered to be established by its producers when that stewardship organization is controlled by businesses that are also service providers to the stewardship organization but are neither exempt organizations pursuant to section 501(c) of the federal Internal Revenue Code nor disregarded entities of an exempt organization. The program operator shall attest in its stewardship plan that it is not controlled in this fashion and provide evidence to support that affirmation. Control of the stewardship organization by a service provider whose parent is neither an exempt organization nor an exempt organization's disregarded entity, shall be considered control of the stewardship organization by the respective service provider. Control of an entity by its service providers includes any of the following circumstances:

(i) Service providers that are neither exempt organizations nor disregarded entities of exempt organizations cumulatively comprise one-third or more of the corporate membership of the stewardship organization,

(ii) Service providers that are neither exempt organizations nor disregarded entities of exempt organizations cumulatively may appoint one-third or more of the directors of the stewardship organization.

(iii) One-third or more of the directors of the stewardship organization are employed by service providers that are neither exempt organizations nor disregarded entities of exempt organizations.

(C) Where a business that contracts with the stewardship organization as a service provider is also a producer of covered batteries, the control exerted by that business or its parent shall not be counted toward control of the stewardship organization by its service providers as otherwise provided in subparagraph (B) of this paragraph.

(D) The explanation shall be accompanied by the following supportive documents that verify the stewardship organization's current exemption from taxation under of section 501(c)(3) of the federal Internal Revenue Code of 1986 and its compliance with the corporate control elements of subparagraph (B):

(i) Ruling or determination letter issued by the Internal Revenue Service to the stewardship organization establishing that it meets the requirements of section 501(c)(3) of the federal Internal Revenue Code of 1986 under which it is claiming an exemption.

(ii) Articles of incorporation or organization most recently filed with the California Secretary of State, or the equivalent formation documents filed in the stewardship organization's state of formation and the bylaws of the organization.

(iii) A list of members of the 501(c)(3) organization, including an indication that the member is any of the following:

- (I) A producer,
- (II) An exempt organization or the disregarded entity of an exempt organization,
- (III) A service provider,
- (IV) A subsidiary of a service provider.

(iv) A list naming the entities that are the stewardship organization's related organizations, as that term is understood pursuant to Schedule R of the Internal Revenue Service Form 990, its instructions, and Instructions for Form 990 Return of Organization Exempt From Income Tax, including entities that are associated or affiliated with the stewardship organization, have control over the stewardship organization, or are controlled by the stewardship organization.

(3) Consultation

(A) A summary of the consultative process between the program operator and the advisory body relating to plan development, including:

- (i) The dates that meetings with the advisory body were held.
- (ii) Any written recommendations from the advisory body.
- (iii) An explanation of how the advisory body's recommendations were considered in the stewardship plan development and incorporated, or not incorporated, in the stewardship plan, or will be incorporated into subsequent stewardship plans, plan amendments, or annual reports.

(B) A description of how the program operator will engage in a consultative process with the advisory body during implementation of the stewardship plan. At a minimum, this includes participating in a meeting with the advisory body at least once per calendar year to receive advice on the implementation of the stewardship plan and any updates or revisions to the plan pursuant to section 42422.3 of the Public Resources Code.

(4) Budget

(A) When, pursuant to paragraph (2) of subdivision (k) of section 42422.1 of the Public Resources Code, the program operator details its anticipated annual costs to implement the California stewardship program, it shall include, at a minimum, separate line items and descriptions of the types of activities relative to each of the following categories, if applicable:

(i) Administration, personnel, overhead, and state agency administration.

(ii) Operations, including, but not limited to, collection, transportation, sorting, processing, and disposition of covered batteries.

(iii) Education and outreach, including, but not limited to, annual evaluation of the efficacy of the comprehensive statewide education and outreach program.

(iv) Legal and professional services.

(v) Expenses related to grants, loans, sponsorships, memberships, partnerships, and collaborations.

(B) A description of any costs for implementing elements of the California stewardship program, including amounts that the program operator requests to share with other program operators, if applicable.

(C) The identification of any monies borrowed by the stewardship organization, the source of those loans, and its protocol for assuring that those loans and any monies that may be borrowed in the future will be paid by the producers.

(D) One element of a stewardship organization's operation in a prudent and responsible manner is demonstrated when producer-generated revenue at least equals the administrative and operational costs of the stewardship organization implementing an approved plan in any consecutive three-year period.

(i) The stewardship organization shall commit to achieving this requirement and identify the measures it will take to satisfy this criterion.

(ii) Producer-generated revenue includes monies collected from participating producers, income from the investment of monies collected from participating producers, and the sale of materials reclaimed from the producers' batteries. Monies collected from participating producers that are placed in a reserve fund shall be counted as revenue so long as those monies are collected within the relevant three-year period.

(iii) Administrative and operational costs are defined in section 18976(a)(2).

(iv) To determine if a stewardship organization satisfies subparagraph (D), CalRecycle will calculate an evaluated total by starting with the consecutive three-year period total producer-generated revenue and from that subtracting the same consecutive three-year period total administrative and operational costs. If the evaluated total is zero or a positive number, the stewardship

organization is compliant. If the evaluated total is less than zero, the stewardship organization is non-compliant with subparagraph (D) and shall be determined not to be operating in a prudent or responsible manner.

(v) CalRecycle shall not make any determinations pursuant to clause (iv) until after six years of program implementation by a stewardship organization.

(E) A stewardship organization shall possess a reserve, that is no less than half nor more than one and one-quarter of the program's proposed operating budget for that year, to mitigate higher than expected expenses or brief disruptions in the collection of adequate monies from its producers, that shall be employed and maintained in the following manner:

(i) Exists in cash or securities maintained in a separate account that may only be drawn upon by the stewardship organization and that appears as its own line item on its budget.

(ii) Only contains monies provided by California producers for the California compliance and may only be expended in support of the California program;

(iii) Is employed whenever the current operating budget is insufficient to maintain the program; and

(iv) Is made full by monies collected from producers within 180 days of the employment of the reserve, according to the stewardship organization's methodology.

(F) The methodology for calculating the cost of satisfying the program operator's obligations over an initial six-month period in which the contingency plan may be executed, consistent with the requirements in section 18976.4, and the anticipated contingency fund balance calculated by the program operator employing this methodology.

(G) The program operator shall propose a cost-sharing methodology and revenue-sharing methodology for any components of the California program that are shared between the California program and the programs of other states, such as the costs of multi-state education and outreach materials or the revenue from the sale of recovered materials that result from the commingled recycling of batteries from multiple states. If there will be no cost-sharing or revenue-sharing, the program operator shall expressly state its election and may omit providing such a methodology.

(H) The program operator shall identify the following and explain how it arrived at the values that are identified:

(i) All assets and all liabilities of the California program; and

(ii) All assets and liabilities that accrue to the California program by virtue of cost allocations with other states' programs.

(iii) All revenue and expenses of the California program.

(iv) All revenue and expenses that accrue to the California program by virtue of its cost allocations with other states programs.

(l) The program operator shall:

(i) Maintain books that are separate from other national or sub-national activities, and

(ii) In its books, accurately reflect any program operator allocated costs and revenues for the California program in accordance with its allocation methodology specified in its approved stewardship plan pursuant to the methodology specified in subparagraph (G).

(iii) Explain how its accounting system and financial records prepared under that system will be compatible with the standards used by its auditor pursuant to section 42424 of the Public Resources Code and section 18976.7(a)(10) and identify any measures it will adopt to ensure that compatibility.

(5) Convenient Collection System

(A) The program operator's affirmation that it will not require collection sites to exceed the applicable limits set forth in section 18976.2(a) and (b).

(B) The program operator's affirmation of its obligation to meet the requirement set forth in section 18976.2(d).

(C) A list of collection sites in a spreadsheet, organized by county, that will be or are collecting covered batteries managed by the program operator, including separate columns for the following information:

(i) Name of business or entity.

(ii) Contact name and title.

(iii) Contact email address.

(iv) Street number and street name.

(v) City.

(vi) State.

(vii) Zip code.

(viii) Latitude.

(ix) Longitude.

(x) Identification of whether the collection site is a permanent collection site as defined in section 18976(a)(16) or whether it is a temporary collection site as defined in section 18976(a)(20).

(xi) Identification of whether the collection site is a retailer, household hazardous waste collection facility, or alternative covered battery collection system.

(D) The program operator's proposed methodology for confirming its compliance with the widespread access and convenience requirement pursuant to paragraph (3) of subdivision (d) of section 42422.1 of the Public Resources Code and section 18976(a)(21).

(E) The program operator's identification of all alternative covered battery collection systems offered by the program operator, including, but not limited to, collection events, large quantity collection programs, consumer mail-back, or other collection mechanisms.

(F) The rules and conditions that the program operator requires of participating collection sites pursuant to subdivision (d) of section 42420.4 and subdivision (i) section 42422.1 of the Public Resources Code and identification of the corresponding statutory or regulatory provision and the purpose of the rule or condition, such as safe collection and handling.

(G) Covered batteries shall be retrieved from collection sites prior to such sites exceeding their capacity. The program operator shall propose the measures it will implement to ensure that this standard is met and a monitoring plan that will confirm or contest the achievement of this requirement.

(H) The program operator's affirmation of its obligation to provide collection sites with information that will enable collection site employees who collect or handle covered batteries to comply with all applicable laws, regulations, and manufacturer-promulgated emergency procedures concerning the types of batteries that might be presented by consumers to the site, including any damaged and defective covered batteries that the collection site has voluntarily chosen to accept and any damaged, defective, and recalled batteries that are inadvertently included in the collection.

(I) Identification of any types of batteries that might be presented at a collection site, that will be refused or treated differently than other batteries in collection or handling based on the battery's appearance or other characteristics and names of those batteries in its plan. Program operators shall provide collection sites with information that will enable collection site employees who collect or handle covered batteries to identify those batteries that need to be distinguished.

(i) Within the scope of batteries that might be presented, the program operator shall, in addition to any other types of batteries, consider damaged and

defective covered batteries that the collection site has voluntarily chosen to accept and inadvertently included damaged, defective, and recalled batteries.

(J) Examples of the information the program operator will provide to collection sites to provide to consumers on how and where to manage any damaged or defective covered batteries or recalled batteries that the collection site refuses to accept, including:

(i) Instructions on how to identify and manage recalled batteries.

(ii) The closest location(s) at which the program operator has confirmed acceptance of damaged or defective batteries and which has approved the program operator to direct consumers to take damaged or defective batteries.

(K) The program operator shall keep the data and metrics for covered battery activities separate from data and metrics for non-covered battery activities, if any collection sites participating in the stewardship program will also collect non-covered batteries, such as electronic waste recyclers, electronic waste dismantlers, and community-based organizations, including a monitoring plan that will confirm or contest the achievement. The program operator shall provide the protocol that it will use to meet this requirement and a monitoring plan that will confirm or contest the achievement of this requirement.

(6) Management of Covered Batteries

(A) The name, address, and contact information of service providers involved in the program operator's management of covered batteries, including, but not limited to, transporters, sorting facilities, and recycling facilities.

(B) The methodology and information the program operator will use to determine and calculate the total weight and number of covered batteries sold in or into the state attributed to a producer participating in the program operator's plan, that are collected in the state and recycled by the program operator each year pursuant to subdivision (g) of section 42424.1 of the Public Resources Code.

(C) The program operator's protocol and methodology for tracking and calculating the weight of covered batteries collected, and covered battery components recycled, or managed via any other disposition method.

(7) Education and Outreach

(A) The program operator shall ensure that its internet website is designed with functionality for mobile platforms and maintained to ensure all information is up to date and accurate and provide the protocol it shall use to confirm this requirement is met. The internet website shall include, but is not limited to:

(i) Collection site addresses.

(ii) Collection site telephone numbers.

- (iii) Collection site days and hours of operation.
- (iv) Addresses of locations in the state that accept damaged or defective batteries.
- (v) Limits on the number of covered batteries to be deposited by a single consumer in a single day.
- (vi) Information and instructions for properly managing recalled batteries.
- (vii) The program operator's telephone number for consumers to call to locate covered battery collection sites and learn other stewardship program information.

(8) Labeling

(A) The program operator shall ensure that, beginning January 1, 2031, all participating producers' covered batteries and packaging for covered batteries are marked with labeling in a conspicuous manner that is visible to consumers to ensure proper collection and recycling. In its plan, the program operator shall identify the measures it will take to ensure compliance with this requirement and the timeframe in which those measures shall be implemented. The program operator shall identify the actions that its participating producers must take and the timeframes within which those actions shall be accomplished. The following information shall appear on the batteries and their packaging:

- (i) The brand name of the covered battery.
- (ii) The chemistry of the covered battery or the standard abbreviation for the chemistry of the covered battery.
- (iii) An indication that the battery must be recycled or disposed of properly.

(B) The communication protocol program operators shall use to notify participating producers of the labeling requirements and the actions the program operator will require of its participating producers to meet the January 1, 2031, labeling requirements.

(C) The program operator shall remove any producer from participating in the stewardship program within 30 calendar days of identifying or learning that a participating producer is not complying with the labeling requirements.

(9) If DTSC did not respond to the program operator's request to review its stewardship plan within 90 calendar days of receipt, documentation of the program operator's request and a written certification that, at the time of submittal to the department, the stewardship plan is consistent with all laws and regulations relevant to DTSC's authority, and DTSC did not respond within 90 calendar days of receipt of the stewardship plan.

(10) A contingency plan that meets the requirements in subdivision (q) of section 42422.1 of the Public Resources Code and section 18976.4.

(11) Acknowledgment that the stewardship plan objectives are free at drop-off, convenient, and safe collection, transportation, recycling, and otherwise proper management of covered batteries and compliance with the Act and this Article.

(12) Authorization for the entity responsible for the financial assurances to develop and implement, subject to department approval, adaptive management strategies to ensure that the stewardship plan objectives are met if specific plan elements conflict with the achievement of the plan objectives while the contingency plan is being executed.

Authority cited: Sections 40401, 40502, 42420.2, and 42424.1, Public Resources Code. Reference: Sections 42420.4, 42422.1, 42422.3, 42422.4, and 42424.1, Public Resources Code; Section 25218.1, Health and Safety Code; Section 501, Title 26, United States Code; and Section 501, United States Internal Revenue Code.

Section 18976.4. Contingency Plans

(a) The contingency plan shall fully satisfy the criteria set forth herein, and the program operator is obligated to carry out and to accomplish all of the following:

(1) The program operator shall identify a methodology for calculating the required amount, which, for purposes of this section, is the amount of money required to fully fund six months of program operation obligations. The program operator shall explain why this methodology is appropriate for making the required amount determination. The required amount calculated by this methodology at the approval of the plan and, subsequently, at annual report submission shall be the amount required for the financial assurance.

(2) At all times from the department's first approval of the program operator's plan through self-execution of the contingency plan the program operator shall maintain financial assurances that meet the requirements of subdivision (c) of this section.

(3) The contingency plan shall self-execute seven calendar days after:

(A) The revocation of the program operator's stewardship plan, or

(B) The terminating program operator's continued service has been revoked because it has defaulted on the obligations set forth in section 18976.5.

(4) The program operator shall perform the following tasks, as specified herein and in the manner prescribed, and propose how it will perform these tasks in its contingency plan:

(A) Empower the entity responsible for the financial assurances mechanism to operate the program from the date of self-execution to the end of the period specified by subdivision (b) of section 42425.2 of the Public Resources Code.

(B) As appropriate for the selected assurance, immediately deposit an amount or obtain an increase in assurances that will establish an adequate amount for the financial assurance if the value of the instrument is lower than the required amount.

(C) Upon the program operator's first close of books after receiving the department's notice of intended revocation of the stewardship plan or a terminating program operator's continued service, and each month thereafter until the cessation of program operator status, provide the department with the most recent accounting books and financial records, including its general ledger, bank statements, and records related to the payment status of contracts and payment by producers.

(D) Ensure that contracting for services necessary for the satisfaction of the producers' responsibilities pursuant to subdivision (b) of section 42425.2 of the Public Resources Code can be continued by the entity responsible for the financial assurance upon self-execution of the contingency plan and shall:

(i) Propose whether this shall occur by assignment and assumption of the program operator's contracts or by another means, and shall specify those means, and

(ii) Furnish proof that the proposal is accepted by the entity responsible for the financial assurance and, if one exists, the beneficiary of the assurance.

(E) Upon self-execution of the contingency plan:

(i) Carry out all actions assigned to it under the contingency plan, including the transfer of administration of the program, unless directed otherwise in writing by the department.

(ii) Pay all money owed in arrears on contracts subject to assignment and assumption, if assignment or assumption has been elected in the plan specified pursuant to subparagraph (D) of this paragraph, and notify the department that it has paid these amounts.

(iii) Provide the department and the entity responsible for the financial assurances mechanism with all records necessary to execute the contingency plan.

(iv) Provide written notification to producers, collection sites, transportation contractors, recycling service providers, intermediate supply chain entities, and contractors supporting the program operator's implementation of its stewardship plan.

(F) Immediately upon discovery, notify the department in any of the following circumstances:

(i) The value of the financial assurance is lower than the required amount.

(ii) The financial assurance is no longer valid or the entity responsible for the assurance is no longer willing to perform its responsibilities.

(5) As a condition of serving as a program operator, it acknowledges and assents to the following:

(A) Maintenance of adequate and valid financial assurances is a condition of serving as a program operator.

(B) The program operator claims no interest in the monies which comprise the financial assurances except those monies in a trust or escrow account that exceed the required amount identified pursuant to paragraph (1) of subdivision (a) of this section prior to self-execution of the contingency plan or those monies that remain in the assurance after all obligations intended to be funded by the assurance have been satisfied.

(C) The legislature's provision for the satisfaction of the producers' responsibilities pursuant to subdivision (b) of section 42425.2 of the Public Resources Code and for a third party to implement plan objectives during this period pursuant to subdivision (q) of section 42422.1 of the Public Resources Code necessarily entails that the contracts which implement the plan are subject to assignment to that third party upon self-execution of the contingency plan, and every contract into which it enters is subject to assignment and assumption as specified in these regulations.

(b) The program operator's failure to carry out fully its responsibilities pursuant to this section, including the obligation to implement its contingency plan as written, constitutes a violation of the Act and this Article. Such a violation may be found regardless of the fact that the plan has been revoked or terminated.

(c) In order to maintain the required financial assurance pursuant to paragraph (2) of subdivision (a) of this section, the program operator shall establish and maintain a mechanism such as an irrevocable trust, escrow agreement, performance bond, or guarantee that meets all applicable requirements of this subdivision:

(1) A fund, in an account separate from all other accounts, that contains the required amount, deposited by the program operator, from 36 months after the department's first approval of the plan through self-execution of the contingency plan and has the sole purpose of allowing for the satisfaction of the producers' responsibilities pursuant to subdivision (b) of section 42425.2 of the Public Resources Code and to implement plan objectives pursuant to subdivision (q) of section 42422.1 of the Public Resources Code.

(2) Identifies one of the following as the beneficiary of the fund:

(A) The department, or

(B) To the extent compatible with all applicable laws, those producers that are participating in the plan on the date of self-execution to be the beneficiaries of the trust. For example, if the producers are the sole members of a single corporation, such a corporation may be the beneficiary of the trust.

(3) Empowers the department to advise the entity responsible for the financial assurances mechanism and approve adaptive management strategies.

(4) Obligates the entity responsible for the financial assurances mechanism to carry out all responsibilities assigned to it pursuant to subdivision (d) of this section, through the closure date specified pursuant to section 18976.5, or until 365 days have followed the department's revocation of the program operator's stewardship plan.

(5) Requires the department's approval prior to any of the following taking effect:

(A) Installation of any successor entity responsible for the financial assurances mechanism proposed by the program operator.

(B) Amendment of the financial assurances mechanism.

(6) Shall not terminate in the absence of the program operator providing another financial assurance provided for in this subdivision and approved by the department. An irrevocable assurance, such as a trust, may not be terminated.

(7) Is administered, construed, and enforced according to the laws of the State of California.

(8) The entity providing the financial assurance waives notice of amendments to the plan.

(9) If a guarantee, the guarantor shall meet the following requirements based on the guarantor's audited year-end financial statements:

(A) Two of the following three ratios: a ratio of total liabilities to net worth that is less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities that is greater than 0.1; and a ratio of current assets to current liabilities that is greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the required amount; and

(C) Tangible net worth of at least \$15 million; and

(D) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the required amount.

(10) If an entity, such as a guarantor or a bond surety, elects to pay the amount rather than to perform the work, it shall establish a trust fund that meets all of the criteria set forth in this section for a trust fund. Upon the successful establishment and full funding of the trust fund and the engagement of a trustee approved by the department, the

trustee shall become the entity responsible for the fulfillment of the requirements of subdivision (d) of this section.

(d) Upon self-execution of the contingency plan, the entity responsible for the financial assurances mechanism shall:

(1) Administer the financial assurances.

(2) Implement the program operator's most recent stewardship plan, including any adaptive management strategies of the stewardship plan, if applicable.

(3) Propose adaptive management strategies to the department for its approval and implement them once approved. The entity shall submit its proposal of adaptive management strategies electronically to the department by email to Batteries@CalRecycle.ca.gov. The date of electronic submittal to the department shall be considered the date of receipt by the department.

(4) Upon written request, immediately provide to the department records necessary to determine compliance with the Act and this Article. At the department's option, records shall be provided either by allowing physical access to the department or other duly authorized regulatory agency or by submitting them to the department by electronic means.

(5) Meet monthly with the department.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Sections 42422.1 and 42425.2, Public Resources Code.

Section 18976.5. Stewardship Plan Termination

(a) The one-year period established pursuant to subdivision (b) of section 42425.2 of the Public Resources Code in which a program operator may continue to operate under the most recent approved stewardship plan shall commence on the plan expiration date and terminate on the closure date.

(b) The closure date shall be 365 calendar days from the expiration date.

(c) A program operator shall terminate its stewardship plan by proposing an expiration date and complying with this section.

(d) At least 395 calendar days prior to the closure date and 30 calendar days prior to the program operator's proposed expiration date of the stewardship plan, the program operator shall electronically submit a termination proposal to the department by email to Batteries@CalRecycle.ca.gov containing the following information:

(1) The program operator's reason for proposing to terminate its stewardship plan.

(2) A detailed explanation of the program operator's outstanding obligations to the department.

(3) The program operator's plan to notify entities of its decision to terminate the stewardship plan, including, but not limited to, producers, collection sites, recycling service providers, intermediate supply chain entities, and contractors supporting the program operator's implementation of its stewardship plan.

(4) A statement addressing whether the program operator intends to dissolve, and, if the program operator does intend to dissolve, the program operator shall include the planned milestones for its dissolution and its anticipated timing for those milestones.

(e) The program operator's proposal shall be considered received by the department on the date of electronic submittal to the department. The fact that the program operator proposes to terminate its program and its proposed expiration date are matters of public record and the program operator's proposal shall be rejected if the program operator claims that these facts in its proposal are exempt from public disclosure. Solely for the purposes of subdivision (b) of section 42425.2 of the Public Resources Code, the plan will be considered terminated on the expiration date.

(f) Except where directed otherwise pursuant to paragraphs (1) and (2) of this subdivision, the program operator shall continue to meet the plan objectives by implementing the Act, this Article, and the obligations it undertook in its former plan until the closure date.

(1) Where the plan objectives can no longer be met by implementation of the plan, the program operator shall propose adaptive management strategies for approval by the department. The program operator shall submit its proposal of adaptive management strategies electronically to the department by email to Batteries@CalRecycle.ca.gov. The date of electronic submittal to the department shall be considered the date of receipt by the department.

(2) Upon revocation of a terminating program operator's continued service, the program operator shall only perform those obligations required by subdivision (h) of this section.

(g) A violation shall accrue to a program operator for conduct during the period between the expiration date and the closure date in the same manner as a violation would have accrued to the program operator prior to the expiration date, including violations pertaining to the program operator's implementation of its plan or former plan.

(h) A program operator's failure to implement completely its obligations under this section is a violation of the Act and this Article and shall constitute grounds for revoking a terminating program operator's continued service pursuant to section 18976.14. Upon the department's revocation of the terminating program operator's continued service:

(1) The contingency plan shall self-execute as described in section 18976.4; and

(2) The program operator shall perform all obligations required by the Act, this Article, and its contingency plan that apply post-execution, including any obligations that might exist as specified in its plan developed pursuant to paragraph (3) of subdivision (d) of this section pertaining to the continuation of contracted services.

(3) The program operator's status shall be resolved in the manner prescribed in section 18976.6.

(i) After the closure date, the program operator whose continued service was never revoked shall no longer be considered a program operator and its status will have ceased, except it remains:

(1) Liable under the Act as program operators for violations and civil penalties arising from conduct that occurred prior to the closure date, including its failure to fulfill its responsibilities under the financial assurances.

(2) Financially responsible as a program operator to the department and DTSC for their costs arising from conduct that occurred prior to the closure date.

(3) Liable under the Act as program operators for violations and civil penalties arising from their failure to fulfill their responsibilities under the financial assurances.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Section 42425.2, Public Resources Code.

Section 18976.6. Stewardship Plan Revocation and Cessation of Program Operator Status

(a) Grounds for revocation of the program operator's plan include the following:

(1) The program operator's annual report has been found noncompliant.

(2) The program operator has provided inaccurate or false information to the department.

(3) Department disapproval of a revised stewardship plan resubmitted by a program operator, or failure to resubmit a revised stewardship plan pursuant to subdivision (c) of section 42422.5 of the Public Resources Code.

(b) Notwithstanding revocation of its stewardship plan or the revocation of a terminating program operator's continued service, the program operator shall continue to implement its responsibilities under the contingency plan until it ceases to be a program operator.

(c) Within 14 calendar days after the stewardship plan's revocation date or the date of the revocation of a terminating program operator's continued service, the program operator shall provide a written electronic notice to the department by email to Batteries@CalRecycle.ca.gov that it has completed the obligations assigned to it pursuant to section 18976.4 and its contingency plan, and request the cessation of its program operator status.

(d) Within 30 calendar days of the request of cessation pursuant to subdivision (b) of this section, the department shall issue a response to the program operator accepting the program operator's request for cessation of program operator status or denying the request because the program operator has failed to satisfy its obligations under the Act

or the contingency plan, or because an audit is necessary to determine compliance with the Act. Upon the issuance of the department's letter accepting the program operator's request, the program operator shall cease to be a program operator, except as specified under subdivision (e) of this section.

(e) Entities that were formerly program operators remain:

(1) Liable under the Act as program operators for violations and civil penalties arising from conduct that occurred prior to the cessation of their program operator status.

(2) Financially responsible as program operators to the department and DTSC for their costs arising from program operator conduct.

(3) Liable under the Act as program operators for violations and civil penalties arising from their failure to fulfill their responsibilities under the financial assurances.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Section 42422.5, Public Resources Code.

Section 18976.7. Annual Reports

(a) Annual reports shall include the information required by section 42424.1 of the Public Resources Code and the following:

(1) An executive summary of the annual report that includes the highlights of the year, the weight of covered primary and rechargeable batteries collected, respectively, the weight of covered primary and rechargeable batteries recycled, respectively, the covered primary and rechargeable battery recycling efficiency rates achieved, respectively, and a statement regarding whether the convenience requirements in subdivision (d) of section 42422.1 of the Public Resources Code were achieved.

(2) Contact Information and Business Organization

(A) Contact information for the corporate officer or designee responsible for submitting the annual report on behalf of the program operator consistent with the requirements in section 18976.3(a)(1)(A).

(B) Contact information for each producer covered by the stewardship plan, consistent with the requirements of section 18976.1(a)(1)(B).

(C) A description of any changes to the corporate organization of the stewardship organization, as compared to its most recent annual report, or, if there is no preceding annual report, the stewardship plan.

(D) The names of the stewardship organization's disregarded entities, related organizations, and unrelated organizations, as those terms are understood in Instructions for Schedule R and the Form 990 instructions issued by the Internal

Revenue Service, and the nature of the stewardship organization's relationship with the entities or organizations, if applicable.

(E) A copy of the stewardship organization's most recently filed Internal Revenue Code Form 990 or Form 990-EZ displaying all information that is required to be available for public inspection. A stewardship organization shall redact any information on the copy that, pursuant to Internal Revenue Service laws, regulations, or rules, is not required to be available for public inspection, if applicable.

(F) Confirmation that the stewardship organization is not controlled by service providers that are neither exempt organizations under section 501(c) of the federal Internal Revenue Service Code nor disregarded entities of an exempt organization pursuant to section 18976.3(a)(2), including the names of any directors who no longer serve as directors, any changes in the affiliation of the remaining directors, and the names and affiliations of any new directors.

(3) Advisory Body Consultation Summary

(A) A summary of advisory body consultation activities, including, but not limited to:

(i) The dates that meetings were held with the advisory body pursuant to section 42422.4 of the Public Resources Code and section 18976.3(a)(3)(A)(i).

(ii) Any written recommendations provided by the advisory body.

(iii) An explanation of how the advisory body's recommendations were considered, and incorporated, or not incorporated, into the annual report.

(4) Financing Mechanism

(A) Proposed changes to the upcoming year's budget allocations and an explanation of the reasons for the changes.

(B) All administrative and operational costs incurred during the reporting period to implement the California stewardship program, including, at a minimum, separate line items and descriptions of the activities relative to each of the cost categories identified in section 18976.3(a)(4)(A).

(C) All revenue received by the California program during the reporting period. The program operator shall use the categories provided in section 18976.3(a)(4)(D)(ii) and shall identify the amount, source, and type of any revenue that was not producer-generated.

(D) The comparison of producer-generated revenue to administrative and operational costs for the consecutive three-year period, calculated in the manner set forth in section 18976.3(a)(4)(D)(iv).

(D) A description of and amount of costs that the program operator shared with other program operators, if applicable.

(E) The calculated cost of satisfying the program operator's obligations over an initial six-month period in which the contingency plan is executed.

(F) The contingency financial assurance value.

(5) Convenient Collection System

(A) A list of collection sites participating in the stewardship program during the reporting period, organized by county, consistent with the requirements in section 18976.3(a)(5)(C), as well as columns that identify the date each site began accepting covered batteries, and, if applicable, any dates any permanent collection site was not accepting batteries.

(B) The calculations that ascertain whether the convenience requirements were met pursuant to subdivision (d) of section 42422.1 of the Public Resources Code and section 18976.2(d) and conclusions concerning the program operator's compliance reached as a result of those calculations, including the following:

(i) A description of the program operator's efforts to ensure that retailers with five or more locations in California were aware of the requirement that they make all locations serve as permanent collection sites.

(ii) The number of collection sites in each county.

(iii) The number of collection sites per applicable population increment in each county, based on the California Department of Finance's most recently reported annual data.

(iv) The percentage of collection sites in each county that are permanent collection sites.

(v) A description of how collection sites are spread throughout each county to facilitate widespread access and convenience and an explanation of whether this spread met or did not meet the program operator's commitment in its plan pursuant to section 18976.3(a)(5)(D). In addition to identifying the dates, the program operator shall identify the specific county for which its obligations were unmet.

(vi) A statement identifying any dates during the reporting period when the program operator did not have the required number of sites in any county. In addition to identifying the dates, the program operator shall identify the specific county for which its obligations were unmet.

(C) If the convenience requirements pursuant to subdivision (d) of section 42422.1 of the Public Resources Code and section 18976.2(d) were not met in any county, describe efforts made to achieve compliance.

(D) The number of consumer complaints received by the program operator regarding the acceptance of covered batteries at collection sites.

(E) The results of the implemented measures and monitoring plan to ensure covered batteries were retrieved from collection sites prior to such sites exceeding capacity pursuant to section 18976.3(a)(5)(G).

(6) Management of Covered Batteries

(A) The total weight of covered primary batteries recycled, and the total weight of covered rechargeable batteries recycled, respectively.

(B) The total weight of covered primary battery material that was not recovered by recycling, and the total weight of covered rechargeable battery material that was not recovered by recycling, respectively, and a description of factors that contribute to yield loss in the recycling processes.

(C) A list of the transportation, sorting, and processing infrastructure used during the reporting period, in the manner provided in section 18976.3(a)(6).

(D) For the reporting period, a list of notices of violation, penalties assessed, fines, or other legal discipline, by date and enforcement authority, wherein the named party is the program operator or any of its service providers including, but not limited to, collectors, handlers, transporters, processors, sorters, and recyclers or their employees or agents in the process of collecting, handling, transporting, or recycling covered batteries or covered battery material covered by the program operator's stewardship plan.

(7) Education and Outreach

(A) Numerical results using the metrics identified in the stewardship plan compared with the goals identified in the stewardship plan to determine the success of the statewide education and outreach program pursuant to paragraph (5) of subdivision (o) of section 42422.1 of the Public Resources Code.

(B) A description of efforts to support participation in the stewardship program by all California communities, including to communicate with consumers in languages other than English, and a list of languages in which outreach materials are available.

(8) Labeling

(A) For annual reports covering reporting periods before January 1, 2031, include:

(i) The labeling measures and the elements of the labeling communications protocol that were fully implemented on the timeframe proposed by the program operator.

(ii) Any labeling measures or elements of the labeling communications protocol that were not fully implemented or that were fully implemented later than timeframe proposed by the program operator.

(iii) The participating producer actions detailed in the plan pursuant to section 18976.3(a)(8) that were fully implemented on the timeframe proposed by the program operator.

(iv) The omission or untimely satisfaction of participating producer labeling actions, inclusive of the name of the producer, its brand, its battery type, the requirement involved, and the duration of the omission or delay.

(B) For annual reports covering reporting periods starting on and after January 1, 2031, include:

(i) The program operator's certification that all of its producers labeled all of their covered batteries in the manner prescribed during the reporting period, or a statement explaining which producers did not label their covered batteries in the manner prescribed.

(ii) When identifying an unmet labeling requirement, the program operator shall state the name of the producer, its brand, its battery type, the requirement involved, the date of the discovery of the unmet requirement, and the duration of the omission or delay.

(iii) The date on which a producer with an unmet labeling requirement was removed from the program.

(9) Reports

(A) A description of any reports, including, but not limited to, research, studies, pilot programs, testing, and evaluations relevant to the stewardship program produced by the program operator, or another entity on behalf of the program operator, pursuant to subdivision (s) of section 42424.1 of the Public Resources Code, including the following information:

(i) The purpose of the report and a brief explanation of how the activities are expected to benefit the stewardship program.

(ii) The program operator's website address where the report is publicly available free of charge.

(iii) An explanation of whether any report was redacted and justification for redacting information.

(10) Audits

(A) An independent audit of the program operator conducted by a Certified Public Accountant in accordance with professional standard set forth for licensees in the public practice of accountancy in section 58 of title 16 of the California Code of Regulations. The Certified Public Accountant shall not perform non-audit services for the program operator or engage in any activities that could affect impartiality. The independent financial audit shall include:

(i) Stewardship program financial statements, prepared in accordance with the professional standard set forth above, including financial statements specific to the California program.

(ii) An opinion on the program operator's compliance with the financial aspects of the Act and this Article.

(iii) Findings and recommendations related to the financial aspects of the California stewardship program. The Certified Public Accountant must attest, if it is factually correct, to the following:

(I) The program operator maintained books for the California program that are separate from other national or sub-national activities and did not commingle monies from California producers with monies from any out-of-state programs.

(II) The program operator allocated costs and revenues to the California program in accordance with its allocation methodology specified in its approved stewardship plan pursuant to section 18976.3(a)(4)(H).

(iv) Management Letter issued by the program operator's Certified Public Accountant.

(11) Proposed Stewardship Plan Modifications or Revisions

(A) A description of any proposed modifications or revisions the program operator proposes to make to its stewardship plan subject to department review pursuant to section 18976.1(d)(5), including, but not limited to, any updates to rules and conditions required of participating collection sites, including the following:

(i) The proposed timing for implementation of the modifications or revisions.

(ii) An explanation of how the modifications or revisions are intended to achieve the requirements of section 42422.1 of the Public Resources Code.

(12) Contingency Plan Updates

(A) Any updates to the names, roles, and responsibilities of entities affected by or who have responsibilities pursuant to the execution of the contingency plan required pursuant to subdivision (q) of section 42422.1 of the Public Resources

Code and section 18976.4, including, but not limited to, producers, collection sites, transportation contractors, recycling service providers, intermediate supply chain entities, and contractors supporting the program operator's implementation of its stewardship plan.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Sections 42422.1, 42422.4, 42424, and 42424.1, Public Resources Code.

Section 18976.8. Record Keeping

(a) A producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, and collection site shall maintain records pursuant to sections 42424 and 42425.3 of the Public Resources Code for three years and make them available to the department immediately upon request or by an alternative timeframe approved by the department in writing for inspections and audits to demonstrate compliance with the requirements in the Act and this Article. The department's request for such records shall be made in writing, electronically, or verbally. If a regulated entity receives a records request from the department and has no responsive records, that entity shall immediately inform the department in writing that it has no responsive records; failure to respond to the department is a violation of the Act and this Article. The records required to be maintained are:

(1) Any documentation that a producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site needs to demonstrate its own compliance under the Act and regulations. The specific types of records identified in subdivisions (e) through (j) are illustrative and are not necessarily sufficient to document that entity's compliance.

(A) A program operator is responsible under the Act for ensuring the compliance of other entities, such as producers and service providers that handle, collect, transport, or recycle covered batteries as part of the stewardship program, which necessarily entails maintaining records to substantiate the compliance of those entities. In order for the program operator to demonstrate its own compliance with the Act and these regulations, it shall maintain those records necessary to demonstrate the compliance of those entities.

(2) The specific types of records identified in subdivisions (e) through (j) of this section in order to ascertain the compliance of other regulated entities.

(b) A producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, and collection site shall maintain records and make them available to DTSC upon request. DTSC's request for such records shall be made in writing, electronically, or verbally. All document requests made by DTSC must be responded to within 30 calendar days from the date that DTSC made the request.

(c) The department, including its authorized employees, and agents authorized by and acting on behalf of the department, shall be allowed, as part of its inspections and audits, to enter the premises and to access all records of any entity subject to this Article during normal working hours. The department shall review and copy any records it deems necessary for inspections or audits. If the department specifies that the records are to be sent to the department by certified mail, those records shall be mailed in that fashion by the entity subject to the written request. If the department directs that the records are to be sent by electronic submission, the entity to whom the request is directed shall send the records to the e-mail address identified in the written request.

(d) A producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site's failure to provide the department and DTSC with access to records or to maintain such records constitutes grounds for the department to impose civil penalties and take disciplinary action.

(e) Documentation program operators maintain shall include:

(1) Minutes, books, and records that clearly reflect the activities and transactions of the program operator's stewardship program.

(2) Records sufficient to identify all entities that collect, transport, ship, or recycle the covered batteries deposited in the program operator's collection containers, and the timeframes during which those activities occurred. Records may include, but are not limited to, bills of lading, manifests, or other documentation that trace the custody and transfer of covered batteries.

(3) Records sufficient to identify the transport or shipment of covered batteries and covered battery residuals to entities other than recyclers.

(4) Permits, licenses, clearances, inspection reports, or other information documenting its compliance and noncompliance, as understood pursuant to section 18976.8(a)(1)(A), with its stewardship plan and national and sub-national laws, including the laws of jurisdictions within and outside of the United States.

(5) Records of complaints, penalties, or violations taken against the program operator, collection sites, transportation services, or processing facilities in the process of collecting, transporting, sorting or processing of covered batteries or covered battery material covered by the program operator's stewardship plan.

(6) Records of any complaints regarding the collection of covered batteries, and how the complaint was addressed by the program operator.

(7) Copies of audits pursuant to section 18976.7(a)(10).

(f) Documentation covered battery retailers maintain shall include:

(1) Records sufficient to identify the date(s) and the entity from which the retailer purchased the covered batteries.

(2) A copy of the certification letter issued by the department pursuant to subdivision (b) of section 42425 of the Public Resources Code, to the producer of a covered battery sold or offered for sale by the retailer if that producer is compliant with the Act but is not listed on the department's internet website as compliant.

(g) Documentation covered battery importers maintain shall include:

(1) Records sufficient to identify the producer of the covered batteries imported in or into the state, unless the importer claims to be the producer of the covered batteries imported. If the importer claims to be the producer of the covered batteries imported, records sufficient to justify the claim are instead necessary.

(2) Records sufficient to identify the date(s) the covered batteries were imported in or into the state.

(3) Records sufficient to identify the entity to which it transferred title for a covered battery and the entity that transferred title of a covered battery to the importer.

(4) Records sufficient to identify the owner and the purchaser at the time of import.

(5) A copy of the certification letter issued by the department pursuant to subdivision (b) of section 42425 of the Public Resources Code, to the producer of a covered battery imported in or into the state by the importer, if that producer is compliant with the Act but is not listed on the department's internet website as compliant.

(h) Documentation covered battery distributors maintain shall include:

(1) Records sufficient to identify the producer of the covered batteries distributed, unless the distributor claims to be the producer of the covered batteries distributed. If the distributor claims to be the producer of the covered batteries distributed, records sufficient to justify the claim are instead necessary.

(2) Records sufficient to identify the date(s) and the entity from which the distributor received the covered batteries.

(3) Records sufficient to identify the date(s) and the entity to which the covered batteries were distributed.

(4) A copy of the certification letter issued by the department pursuant to subdivision (b) of section 42425 of the Public Resources Code, to the producer of a covered battery distributed by the distributor, if that producer is compliant with the Act but is not listed on the department's internet website as compliant.

(i) Documentation covered battery producers maintain shall include:

- (1) Records sufficient to identify the date(s) the producer sold or distributed for sale the covered batteries in or into the state.
- (2) Records sufficient to identify the entity to which the producer sold or distributed the covered batteries for sale.
- (3) A copy of the certification letter issued by the department pursuant to subdivision (b) of section 42425 of the Public Resources Code, to the producer of a covered battery if that producer is not listed on the department's internet website as compliant.

(j) Documentation covered battery recyclers maintain shall include:

- (1) Permits, licenses, clearances, inspection reports, or other information documenting its compliance and noncompliance, as applicable, with the relevant stewardship plan and national and sub-national laws, including the laws of jurisdictions within and outside of the United States.
- (2) To the extent that a recycler, in the normal course of business, obtains permits, licenses, clearances, or inspection reports documenting the compliance of regulated entities with the stewardship plan or national and sub-national law, including the laws of jurisdictions within and outside of the United States, those records shall be maintained.
- (3) Records sufficient to identify the entity from which the recycler received the covered batteries.
- (4) Records sufficient to identify the date(s) on which the covered batteries were received.
- (5) Records sufficient to identify the chemistry of the covered batteries the recycler received.
- (6) Records sufficient to identify the weight of covered batteries the recycler received.
- (7) Records sufficient to identify the weight of residuals from processing the covered batteries.
- (8) Records sufficient to identify the weight of materials recycled from processing the covered batteries.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Sections 42420.1, 42421.2, 42422.1, 42424, 42424.1, 42425, 42425.1, and 42425.3, Public Resources Code; and Section 1484 of the United States Code.

Section 18976.9. Compliance Evaluation and Determination

(a) The department shall conduct investigations to examine operational activities and records to determine compliance with the Act and this Article. The investigations require entities subject to the Act and this Article to produce records requested by the department and DTSC. The investigations also require the entity's cooperation with onsite inspections

by the department, including its authorized employees and agents authorized by and acting on behalf of the department. An authorized department employee or agent shall be allowed to enter the premises of any entity subject to the Act and this Article during normal working hours to conduct inspections. Methods may include, but are not limited to, the review and copying of any records required by the Act and this Article.

(b) Notices of violation issued by the department may identify additional records and information that the entity must produce regarding such noncompliance.

(c) The program operator shall be found not to have implemented its stewardship program and thus have violated subdivision (a) of section 42422.6 of the Public Resources Code wherever it fails to satisfy its obligations established pursuant to the Act and this Article, including its obligation to implement its approved plan.

(d) The program operator has a non-delegable duty to ensure that handling, transport, processing, and recycling of covered batteries under the stewardship program complies with all applicable state and federal laws and regulations. A violation of other state or federal laws by a service provider acting in furtherance of the stewardship program that is determined to have occurred by a governing body with appropriate jurisdiction shall be considered to be a determination that the program operator has violated those state or federal laws or regulations.

(e) If a producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site fails to maintain records or other evidence sufficient to demonstrate compliance with any requirement of the Act or this Article or fails to provide such records upon request by the department, penalties for the absence of or failure to provide records shall accrue as follows, with each day of the violation being subject to the per-day penalties set forth in section 42425.1 of the Public Resources Code:

(1) Violations based on the failure to maintain records shall be deemed to have occurred on each day for which the entity failed to maintain sufficient evidence to demonstrate compliance.

(2) Violations based on the failure to provide records to the department upon request shall be deemed to begin on the date of the department's request and to have occurred for each day for which the party failed to provide the records.

(f) For purposes of paragraphs (1) through (3) of subdivision (j) of section 42420.1 of the Public Resources Code only, a person is in the state if the person is subject to the jurisdiction of California courts pursuant to section 410.10 of the Code of Civil Procedure with respect to the Act and any of the following is true:

(1) Service of summons, excluding service in a manner requiring a court order, on the person may be completed in the state pursuant to sections 413.10 through 417.40 of the Code of Civil Procedure (Article 1 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure) or section 2110 of the Corporations Code.

(2) The person consents to being considered in the state, being served notices and statements of charges by any means chosen by the department pursuant to section 18976.12, and being personally subject to the jurisdiction of California courts. To be considered in the state, such person must, upon demand, confirm the foregoing consent in writing, such as by affidavit or written agreement, or through conduct consistent with such consent. Conduct consistent with such consent includes responding to a statement of charges, filing a pleading, or otherwise appearing in a legal proceeding in the state.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.
Reference: Sections 42420.1, 42422.1, 42422.6, 42424, 42425.1, and 42425.3, Public Resources Code; sections 410.10, and 413.10 through 417.40 of the Code of Civil Procedure; section 2110 of the Corporations Code.

Section 18976.10. Compliant Producer List and Certification Letters

(a) A program operator's submission pursuant to section 18976.1(a) shall cause the department to publish its next list of compliant producers pursuant to section 42425 of the Public Resources Code. Only the producers that are included on a program operator's most recent submission to the department shall be included on the department's new list of compliant producers.

(1) To appear on the department's new list of compliant producers, a producer that formerly participated in a different program operator's stewardship program shall provide sufficient evidence to the department through its new program operator that it is participating in another stewardship program under a department-approved stewardship plan.

(b) A certification letter issued by the department pursuant to subdivision (b) of section 42425 of the Public Resources Code has the effect of demonstrating a producer, brand, and covered battery type are in compliance and may be treated as listed by retailers, distributors, and importers as compliant until the producer is determined to be noncompliant or the department publishes a new list of compliant producers, whichever is sooner.

(c) For the purposes of determining whether a retailer, importer, or distributor may sell, offer for sale, import, or distribute a covered battery pursuant to paragraph (1) of subdivision (d) of section 42425 of the Public Resources Code, that entity shall consult the department's internet website to ensure that the combined producer, brand, and covered battery type are identified together on the department's list.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.
Reference: Sections 42421, 42421.2, and 42425, Public Resources Code.

Section 18976.11. Administrative Civil Penalties

(a) The department shall issue a written notice of violation before commencing an action to impose administrative civil penalties. The notice of violation shall list and describe the

nature of the violation(s). The department shall issue a notice of violation to the respondent if the department determines that any producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site has violated the Act or this Article.

(b) A producer, program operator, stewardship organization, manufacturer, distributor, retailer, importer, recycler, or collection site not in compliance with the Act or this Article is subject to administrative civil penalties pursuant to subdivision (a) of section 42425.1 of the Public Resources Code.

(c) A penalty order shall be served in the manner as provided for statement of charges in section 18976.12(c).

(d) Subject to the procedural requirements in this Article, and except in the event of a default or other waiver by the person alleged by the department to have violated the Act, penalty determinations shall be made by the director or the director's designee based on evidence presented in hearings conducted pursuant to section 18976.13 addressing, at a minimum, the factual factors identified herein:

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

(2) The number and severity of violations. In identifying the number and severity of the violation(s), the department shall consider, to the extent such information is available, the following:

(A) The number of noncompliant battery product lines established by a unique stock keeping unit (SKU) or global trade item number such as a universal product code (UPC); or the number of noncompliant battery brands, battery types, and battery sizes, if no SKU or global trade item number is available.

(B) The number of discrete requirements of the Act, this Article, or a stewardship plan that are violated. For example, there are grounds for multiple violations pursuant to subdivision (a) of section 42422.6 of the Public Resources Code and section 18976.9(c) where the program operator fails to implement its stewardship program fully due to its nonadherence to its labeling obligations to which it has committed itself in its plan and its concurrent failure to spread collection sites throughout each county to facilitate widespread access and convenience.

(3) The willfulness of the violator's conduct, including evidence that the violation was intentional, knowing, or reckless.

(4) The violator's financial position, including its business scale and net worth.

(5) History of violation(s) of the same or similar nature.

(6) Whether the violator took good faith measures to comply with the Act and this Article and the period of time over which these measures were taken.

- (7) Evidence of any financial gain resulting from the violation(s).
- (8) The economic effect of the penalty on the violator.
- (9) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (10) Any other factor that justice may require.

Authority cited: Sections 40401, 40502, 42420.2, and 42425.1, Public Resources Code.
Reference: Sections 11415.10, 11505, and 11520 of the Government Code; sections 42422.6, 42425.1, 42425.3, and 42425.4, Public Resources Code.

Section 18976.12. Notices

(a) Notices of violation, notices of disciplinary action, and all accompanying documents shall be delivered to the address on file with the department pursuant to subdivision (e) of this section by one or more of the following means:

- (1) Delivery to the address on file via first-class mail, registered mail, certified mail, commercial carrier, or personal delivery.
- (2) Email to the address on file with the department pursuant to subdivision (e) of this section, or, for entities known by the department to have failed to maintain an up-to-date email address on file, any other email address, with written consent or written acknowledgement of receipt.

(b) For persons not required to file a primary business address with the department or that have failed to do so, notices of violation, notices of disciplinary action, and all accompanying documents shall be delivered using any of the methods described in subdivision (a) of this section to at least one of the following addresses:

- (1) The person's mailing address on file with the Secretary of State.
- (2) The person's last known business or mailing address.
- (3) The business or mailing address of the attorney, if any, who acknowledges in writing their representation of the person with respect to the department's allegations, or any other party authorized in writing to receive notices on behalf of the person.
- (4) The person's email address, with written consent or written acknowledgment of receipt.

(c) A statement of charges commencing an administrative proceeding to impose administrative civil penalties shall be served on the person to be penalized using any of the following means:

(1) For persons required to have an address on file with the department pursuant to subdivision (e) of this section, by registered or certified mail.

(2) By personal service in any manner as provided for service of summons pursuant to sections 413.10 through 416.40 of the Code of Civil Procedure.

(3) By any other means, provided that the respondent subsequently files a notice of defense or otherwise appears in the administrative proceeding.

(d) Notices of violation are deemed to be issued on the fifth calendar day or, for notices delivered outside the State of California, the 10th calendar day, after the date on which the department deposits it with the United States Postal Service for delivery via certified mail, unless a notice is delivered by another method permitted pursuant to this section, in which case the notice is deemed to be issued upon delivery. For any violation that accrues from the date of the notice of violation's issuance and for which the penalty imposed pursuant to section 42425.1 of the Public Resources Code, penalties shall accrue from the date the notice of violation is deemed to be issued pursuant to this subdivision.

(e) Program operators and producers are required to maintain an address on file with the department. A program operator shall satisfy this requirement on its own behalf and on the behalf of its producers.

(1) The program operator's address on file is the address found on the most recent of the following filings with the department: the stewardship plan pursuant to section 18976.3 and the annual report pursuant to section 18976.7.

(2) The producer's address on file is the address found on the most recent of the following filings with the department: the list submittal pursuant to section 18976.1 and the annual report pursuant to section 18976.7.

Authority cited: Sections 40401, 40502, 42420.2, and 42425.1, Public Resources Code; sections 11415.10 and 11440.20, Government Code.

Reference: Sections 42425.1, and 42425.2 Public Resources Code; Sections 413.10 through 416.40, Code of Civil Procedure; and Sections 11415.10, 11440.20, and 11505, Government Code.

Section 18976.13. Procedure for a Hearing

(a) All administrative hearings shall be conducted by the department as informal hearings and heard by the director or director's designee according to Article 10 of Chapter 4.5 (commencing with section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding the foregoing, the procedures and requirements set forth in sections 11505(a) and (b) and 11506 of the Government Code shall apply to any hearing conducted under this division.

(b) A respondent may submit to the department a request for a hearing to contest the imposition of penalties or other disciplinary action within fifteen (15) calendar days of being served a statement of charges pursuant to section 18976.12(c). Absent the department's finding that the respondent had good cause, failure to submit a timely hearing request shall waive the right to a hearing.

(c) Within fifteen (15) calendar days of receipt of a respondent's written request for a hearing pursuant to subdivision (b), the director or hearing officer shall provide the respondent with a written notice setting forth the procedures that will govern the hearing, including, at a minimum, procedures relating to the use and admissibility of oral and written testimony, depositions, subpoenas and witnesses, discovery, and other forms of evidence.

(d) After conducting a hearing on the merits, or if no hearing is requested, the department may take any disciplinary or remedial action authorized under the Act, including those described in section 18976.14.

Authority cited: Sections 40401, 40502, 42420.2, and 42425.1, Public Resources Code; and Section 11415.10, Government Code.

Reference: Sections, 42425.1, 42425.2, and 42425.3, Public Resources Code; and Sections 11445.10, 11505, and 11506 of the Government Code.

Section 18976.14. Disciplinary Actions

(a) Actions taken in accordance with subdivision (b) of this section shall occur after notice and hearing, if one is requested in the manner specified in section 18976.13. The department shall issue a written notice of disciplinary action prior to imposing discipline pursuant to subdivision (b) of this section.

(b) In taking an action under subdivision (a) of section 42425.2 of the Public Resources Code, the department shall also take any of the following actions as necessary to ensure compliance with the requirements of the Act:

- (1) Revoke a previously approved stewardship plan.
- (2) Revoke a terminating program operator's continued service prior to the closure date because the program operator has defaulted on its obligations as described in section 18976.5(h).
- (3) Revoke a program operator's status as a program operator.
- (4) Require revisions and resubmittal of the stewardship plan within 60 calendar days or an alternative timeframe approved by the department.

(5) Require additional reporting relating to compliance with the requirements of the Act or this Article that were not met within 60 calendar days or an alternative timeframe approved by the department.

(6) Remove the producer, along with its brands and covered battery types from the department's list of compliant producers, as specified in subdivision (e) of section 42425 of the Public Resources Code.

(7) Remove a producer's brands and covered battery types from the list described in paragraph (6) of this subdivision if the producer is only non-compliant with regard to those specific brands and covered battery types and the purposes of the Act are best served by a more limited de-listing.

(8) Post the noncompliant entity onto a list of noncompliant entities.

(9) Impose additional compliance reporting requirements.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code; and Section 11445.20, Government Code.

Reference: Sections 42422.1, 42425, 42425.1, and 42425.2, Public Resources Code.

Section 18976.15. Information Partially or Wholly Exempt from Disclosure

(a) All records submitted to the department pursuant to the Act and this Article are subject to mandatory disclosure under the Public Records Act, Division 10 (commencing with section 7920.000) of Title 1 of the Government Code, unless an express prohibition or an express exemption from mandatory disclosure applies under the Act or this Article, or the Public Records Act.

(b) The department shall not disclose information that constitutes a trade secret, as defined in subdivision (d) of section 3426.1 of the Civil Code, in response to public records requests.

(c) The department shall not disclose information that subdivision (e) of section 42424 of the Public Resources Code prohibits the department from disclosing.

(d) The department shall not post, without appropriate redaction, a report submitted pursuant to subdivision (s) of section 42424.1 of the Public Resources Code disclosing information that is appropriately identified as trade secret, proprietary, or confidential information protected under existing law in the manner specified in subdivision (e) of this section and was redacted in the entity's submission.

(e) For any information submitted to the department or DTSC that is claimed by the person submitting it to be partially or wholly exempt from disclosure under the Public Records Act, the person shall clearly identify such information and provide the legal basis for it being exempt, in the following manner:

(1) Specifically designate each portion of the submission containing such information. For example, confidential proprietary information protected by subdivision (e) of section 42424 of the Public Resources Code shall be designated "confidential proprietary," trade secret information shall be designated "trade secret," and private email addresses shall be labeled "personal privacy information." Such designation shall be made by directly labeling the portion as such or, if direct labeling is impractical, by submitting written explanation clearly explaining what portions of the submission contain information exempt from disclosure.

(2) At the time of submission, provide the name, telephone number, and physical, mailing and electronic mailing address of the individual to be contacted regarding requests received by the department or DTSC for disclosure of the information.

(3) The entity is responsible for identifying this information in every submission and may not rely on identification of similar information in past submissions to support its claim of exemption from disclosure.

(f) For any submission containing information that the entity claims should be withheld by following the process set forth in subdivision (e) of this section, the entity shall additionally submit a version of the document that reflects the redaction of the sections to which that claim pertains.

(g) In every submission, the entity shall certify the following:

(1) It has specifically identified, by following the process set forth in subdivision (e) of this section, all names of individuals, physical addresses, mailing addresses, email addresses, IP addresses, phone numbers, and other contact information that constitute private contact information, as well as information pertaining to personnel, medical, or similar files which, if disclosed, would constitute an unwarranted invasion of personal privacy.

(2) All information that is not specifically identified is public business information that may be disclosed unless some other express exemption or prohibition applies.

(h) Any portions of submissions that are not specifically designated in the present submission as containing information that should be withheld from disclosure shall be considered not to contain such information and, unless some other express exemption or prohibition applies, shall be deemed subject to mandatory disclosure under the Public Records Act.

(i) For information that a person was required to submit pursuant to this chapter or the Act, the department shall follow the procedures set forth in section 40062 of the Public Resources Code when determining whether information has been properly identified as a trade secret. The information shall be considered subject to section 40062 of the Public Resources Code regardless of the form in which it is maintained by the department, and sections 17044 through 17047 of Title 14 of the California Code of Regulations shall not apply to such information.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.
Reference: Sections 40062, 42051.2, 42422.5, 42424, and 42424.1, Public Resources Code; Section 3426.1, Civil Code; and Section 7920.000 et seq., Government Code.

Section 18976.16. State Agency Coordination and Fees

(a) Initial Plan Submittal Coordination

(1) Each potential program operator shall notify the department in writing by email to Batteries@CalRecycle.ca.gov within 30 calendar days after the effective date of regulations, or at least 210 calendar days prior to submittal of an initial proposed stewardship plan to DTSC, of its intent to submit an initial proposed stewardship plan.

(2) The notification shall include the date the program operator intends to submit its initial proposed stewardship plan to DTSC.

(b) Agency Fees

(1) At least 90 calendar days before the date the program operator stated it will submit its initial proposed stewardship plan to DTSC pursuant to paragraph (2) of subdivision (a) of this section, the department and DTSC shall independently notify the program operator of its estimated anticipated costs.

(2) The department and DTSC's costs shall cover the full personnel costs related to the administration, implementation, and enforcement of the Act and this Article. Costs shall include labor, fringe benefits, travel, equipment, supplies, and contracts, as well as costs calculated using section 9213.1 of the State Administrative Manual, including for general administration, budgeting, accounting, business services, training, and legal.

(3) Program operators shall, on a schedule determined by the department and DTSC, as applicable to each agency's fees, pay the department and DTSC, respectively.

(A) The department will notify the program operators in writing of the required payment schedule at least 90 calendar days prior to the initial billing cycle and each year thereafter by July 1.

(B) DTSC will notify program operators in writing of the required payment schedule at least 90 calendar days prior to the initial billing cycle and each year thereafter by July 1.

(4) Within 30 calendar days of the department and DTSC notifying a program operator of each department's respective costs, the program operator shall pay the department and DTSC for their full costs.

(5) Notwithstanding subdivision (a) of this section, program operators shall use the department and DTSC's actual incurred costs to estimate the department and DTSC future costs for the purpose of preparing budgets.

Authority cited: Sections 40401, 40502, and 42420.2, Public Resources Code.

Reference: Sections 42423 and 42422.1, Public Resources Code; and Section 9213.1, State Administrative Manual.