

PROPOSED - California Code of Regulations

Title 14. Natural Resources

Division 7. Department of Resources Recycling and Recovery

Chapter 8.2. Electronic Waste Recovery and Recycling

For reference, this document shows proposed regulatory revisions and adoptions via underline:

Article 2.0. Electronic Waste Payment System – Applicability and Limitations, Document Submittals, Records, Audits and Net Cost Report

§ 18660.7. Document Submittals.

- (a) A collector, a recycler, or a manufacturer shall prepare and submit applications, registrations, claims and/or reports required pursuant to this Chapter in the manner designated by CalRecycle.
- (b) CalRecycle shall only accept collector, recycler or dual entity applications, claims and reports containing all the required information and bearing an original signature of the primary applicant, or a person with signature authority as designated by the primary applicant pursuant to Section 18660.11 of this Chapter.
- (c) CalRecycle shall only accept manufacturer registrations, claims and reports containing all the required information and bearing an original signature of the primary registrant, or a person with signature authority as designated by the primary registrant pursuant to Section 18660.35 of this Chapter.
- (d) CalRecycle shall provide forms upon request that may be used to meet the requirements for the applications, registrations, and payment claims specified in this Chapter.
- (e) A collector, a recycler, or manufacturer shall ensure that applications, registrations, claims, reports and all applicable supporting documentation are accurate, complete, and typed or legibly handwritten in English using permanent ink. A collector or a recycler may void errors only by using a single line through the error. A collector or a recycler shall not use correction fluid, correction tape or erasures for correcting errors on any document required by or submitted to CalRecycle.
- (f) Any person, including but not limited to a handler, who provides documentation or information to an approved collector or an approved recycler that may be used by the approved collector or approved recycler pursuant to this Chapter shall not make a false statement or representation in the information or documentation provided.

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

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

Article 6. Administrative Civil Penalties

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

- (a) Administrative civil penalties authorized by Public Resources Code Section 42474(d) shall be assessed in accordance with the procedures set forth in this Section.
- (b) The penalties shall be assessed as follows:
 - (1) A “Minor” violation means first-time violations where the gravity of the violation is severe. The penalties for this type of violation would be no less than five hundred dollars (\$500) and no more than four thousand dollars (\$4,000).
 - (2) A “Moderate” violation means subsequent or multiple violations. The penalties for this type of violation would be no less than four thousand dollars (\$4,000) and no more than fifteen thousand dollars (\$15,000).

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- (3) A "Major" violation means violations that indicate a pattern and practice of noncompliance, or intentional violations. The penalties for this type of violation would be no less than fifteen thousand dollars (\$15,000) and no more than twenty-five thousand dollars (\$25,000).
- (c) CalRecycle may consider any or all of the following when imposing an administrative civil penalty:
- (1) The nature, circumstances, extent, and/or gravity of the violation;
 - (2) The value of the actual or potential economic benefit to the violator associated with the violation;
 - (3) The amount of actual or potential harm to CalRecycle, financial or otherwise;
 - (4) Any prior history of noncompliance with this Chapter, including but not limited to any prior violations of a similar nature;
 - (5) Truthful and forthright cooperation during any relevant investigation, including but not limited to any measures taken by the violator to remedy the current violation or prevent future violations;
 - (6) The violator's ability to pay the proposed penalty;
 - (7) The deterrent effect that the imposition of the proposed penalty would have on the community as a whole and the violator; and
 - (8) Any other matters that justice may require.
- (d) In any case in which it is determined that more than one person or entity is responsible and liable for a violation, each such person may be held jointly and severally liable for an administrative civil penalty.
- (e) Prior to the issuance of an accusation, CalRecycle may issue a prior written notice of violation alleging with specificity:
- (1) A description of the violation or violations;
 - (2) The proposed penalty amount, if any; (b)
 - (3) The facts considered in determining the violation and penalty amount;
 - (4) A list of corrective actions to be taken by the violator; and
 - (5) An acknowledgement of receipt to be executed by the violator.
- (f) CalRecycle shall issue an accusation, as defined in Government Code Section 11503, seeking an administrative penalty or penalties pursuant to this Section. The accusation and all accompanying documents may be served by personal service or registered mail.
- (g) Within fifteen (15) days after service upon the respondent of the accusation seeking any administrative civil penalty, respondent may request a hearing by filing a Notice of Defense pursuant to Government Code Sections 11505 and 11506. The request for hearing may be made by delivering or mailing the Notice of Defense to CalRecycle. Failure to file a Notice of Defense within fifteen (15) days of service of the accusation shall constitute a waiver of the respondent's right to a hearing and CalRecycle may proceed upon the accusation without a hearing.
- (h) CalRecycle shall provide a hearing before the director or his or her designee, who shall act as hearing officer. At any time during the proceeding, before a decision is issued, CalRecycle and the respondent(s) may engage in settlement of the matter.
- (i) The hearing officer shall consider the notice of violation (if applicable), the accusation, the Notice of Defense, and all other relevant evidence presented by CalRecycle and the respondent. The hearing officer shall specify relevant procedures to be conducted during the proceeding, which include but are not limited to, informing the parties as to whether the hearing officer will consider witness testimony, and whether there shall be written and/or oral arguments. The hearing officer shall issue a written decision stating the factual and legal basis for the decision within thirty (30) days of the

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hearing. If the hearing officer determines that any penalties are owed, the hearing officer shall include in the written decision the date payment of the assessed penalties shall be due and paid.

- (j) The respondent's failure to comply with the hearing officer's written decision may be grounds for suspension or revocation of their status as an approved collector and/or approved recycler.
- (k) Except as otherwise specified herein, the hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400. The hearing shall take place in Sacramento, California unless a location is otherwise specified by the hearing officer. If respondent wishes to request an alternate location, the respondent must make that request in the Notice of Defense and provide a justification of undue burden.
- (l) Penalties assessed in a hearing officer's decision may be in addition to any adjustments made pursuant to Section 18660.30 and may be offset by CalRecycle against any other amounts that are otherwise due to the respondent(s) for payment claims. In the event of settlement, the parties may agree to offset provisions in the settlement agreement.

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

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

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

- (a) The administrative procedure set forth in Section 18660.44(c)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(a).
- (b) The hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400.

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

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

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

- (a) The administrative procedure set forth in Section 18660.44(b)-(i) shall apply to any civil liability administratively imposed pursuant to Public Resources Code Section 42474(c).
- (b) The hearing shall be governed by the informal administrative hearing procedures in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with Section 11400.

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

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