

**State of California
Office of Administrative Law**

In re:
Department of Toxic Substances Control

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: 69600.1, 69600.2, 69600.3,
69600.4, 69600.5, 69600.6,
69600.7

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0531-02

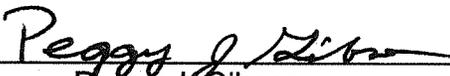
**OAL Matter Type: Emergency Resubmittal
(ER)**

The Department of Toxic Substances Control is permitted by Health and Safety Code section 25150.84 to collect an annual fee from metal shredding facilities to reimburse the department's costs to evaluate metal shredding facilities and their wastes. This emergency action establishes which metal shredders are subject to the fee and how the fee is assessed.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/9/2016 and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner pursuant to Health and Safety Code section 25150.84.

Date: June 9, 2016



Peggy J. Gibson
Senior Attorney

For: Debra M. Cornez
Director

Original: Barbara A. Lee
Copy: Ed Benelli

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0531-02-ER
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For use by Office of Administrative Law (OAL) only

2016 MAY 31 P 1:40
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN -9 2016

1:42 PM

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
Department of Toxic Substances Control

AGENCY FILE NUMBER (if any)
R-2015-01

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Annual Fee on Metal Shredding Facilities	TITLE(S) Title 22 CCR	FIRST SECTION AFFECTED Chpt 56, sec 69200.1	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Ed Benelli	TELEPHONE NUMBER (916) 324-6564	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Annual Fee on Metal Shredding Facilities	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-1214-02 (E)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Chapter 56, sections 69600.1 through 69200.20
	AMEND none
TITLE(S) Title 22 CCR	REPEAL none

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Deemed emergency purs. to statute</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State
<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> State Fire Marshal

7. CONTACT PERSON Ed Benelli	TELEPHONE NUMBER (916) 324-6564	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Edward.Benelli@dtsc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 5/20/16
TYPED NAME AND TITLE OF SIGNATORY Barbara A. Lee, Director, California Department of Toxic Substances Control	

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ENDORSED APPROVED
JUN 09 2016
Office of Administrative Law

SECTIONS TO BE ADOPTED:

T22 SECTION

69600.1

69600.2

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per agency
request

1 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:
2 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),
3 Health and Safety Code.

4
5 **§ 69600.3. Applicability.**

6 (a) The annual fee requirements apply to metal shredding facilities that meet all the
7 requirements set forth below:

8 (1) are located within the state of California,

9 (2) are operating using one of the following authorities or classifications that allow lawful
10 metal shredding operations:

11 (A) A notification issued by the Department in accordance with section 66260.200(f) of
12 title 22 of the California Code of Regulations that otherwise hazardous waste may be
13 classified and managed as nonhazardous. Successor entities to metal shredding
14 facilities that received the notification are included in this section;

15 (B) An order issued or entered into by the Department under chapter 6.5 of division 20
16 of the Health and Safety Code that authorizes a metal shredding facility to continue
17 operations pursuant to specified management and operating conditions;

18 (C) A judgment issued by a court with jurisdiction in a matter to which the Department
19 and at least one metal shredding facility are parties that authorizes operations
20 pursuant to specified management and operating conditions; or

21 (D) A permit issued by the Department under chapter 6.5 of division 20 of the Health
22 and Safety Code that authorizes metal shredding operations.

23 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:
24 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.84(a), and 25150.84(b), Health and
25 Safety Code.

26
27 **§ 69600.4. Assessment of the Annual Fee.**

28 (a) The Department shall assess an annual fee on each metal shredding facility in an amount
29 sufficient to reimburse the Department's annual costs.

30 (b) The Department's annual costs shall include costs incurred to conduct the following
31 activities:

- 1 (1) Development and administration of the Annual Fee;
- 2 (2) Environmental Analysis and Evaluation;
- 3 (3) Assessment of Off-site Migration;
- 4 (4) Stakeholder Workshops and other outreach activities;
- 5 (5) Regulation Development and Adoption; and
- 6 (6) Laboratory Support.

7 (c) The annual fee shall be determined by dividing the Department’s annual costs by the
 8 number of metal shredding facilities operating in any portion of the calendar year to which
 9 the fee applies.

10 (d) To provide metal shredding facilities with the best estimate of the annual fee, the
 11 Department has projected the annual fees for calendar years 2015, 2016, and 2017 in the
 12 following fee schedule:

Calendar Year	Projected Annual Fee
2015	\$43,900
2016	\$69,800
2017	\$52,700

14
 15 (e) If the annual fee invoiced differs from the Department’s projected annual fee due to higher
 16 or lower actual costs incurred for any calendar year, a change in the number of metal
 17 shredding facilities, or both, the Department shall explain any difference in the invoice to
 18 each metal shredding facility.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:
 20 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),
 21 Health and Safety Code.

22
 23 **§ 69600.5. Administration of the Annual Fee.**

- 1 (a) The Department shall invoice each metal shredding facility for the annual fee for calendar
2 year 2015 no later than July 1, 2016.
- 3 (b) The Department shall invoice each metal shredding facility for the annual fee for calendar
4 year 2016 no later than February 1, 2017.
- 5 (c) The Department shall invoice each metal shredding facility for the annual fee for calendar
6 year 2017 no later than February 1, 2018.
- 7 (d) The annual fee shall be due and payable to the Department sixty (60) calendar days after
8 the facility is invoiced.
- 9 (e) A transfer of ownership or operation of assets of a metal shredding facility during a calendar
10 year shall not cause an additional annual fee to be assessed if the fee for the same calendar
11 year has been paid by the previous owner or operator.

12 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:
13 Section 25150.84(a), Health and Safety Code.

14

15 **§ 69600.6. Administration of Late Fees.**

- 16 (a) A late fee of ten percent (10%) shall be assessed on any payment that is not received as
17 postmarked by due date, or on such later date as notified by the Department.
- 18 (b) Beginning on the first day of the calendar month following the due date, simple interest
19 shall accrue monthly on any unpaid fee or portion thereof at the "modified adjusted rate
20 per month, or fraction thereof" as established by the State Board of Equalization pursuant
21 to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the
22 fee is paid in full.
- 23 (c) The late fee or interest assessed pursuant to this section may be waived if the Department
24 determines that the failure to make a timely payment was due to reasonable cause and
25 circumstances beyond the person's control, and occurred notwithstanding the exercise of
26 ordinary care and the absence of willful neglect. Mere disagreement with the fee
27 assessment shall not be deemed reasonable cause. A person seeking to be relieved of late
28 fees or interest shall submit a written statement to the Department, signed under penalty
29 of perjury, setting forth the facts upon which he or she bases the claim for relief.
- 30 (d) If the Department provides a refund because of an erroneous billing, the refund shall be
31 subject to simple interest at the "modified adjusted rate per month, or fraction thereof" as
32 established by the State Board of Equalization pursuant to section 6591.5 of the Revenue
33 and Taxation Code. Except, no refund shall be given and no interest shall accrue where the
34 erroneous billing was due to incorrect information provided by the person seeking the
35 refund.

1 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:
2 Section 25150.84(a), Health and Safety Code.

3
4 **§ 69600.7. Dispute Resolution.**

5 (a) No refund shall be granted for any fees erroneously collected unless the person who seeks
6 the refund submits written notification of the error to the Department within one year of
7 the date the person is notified of the fee assessment.

8 (b) A person may dispute the assessment of the annual fee by submitting a petition to the
9 Department director. The person must submit the petition in writing within one year of the
10 date the person is notified of the fee assessment. The petition must state the specific
11 grounds upon which it is founded. If requested, the Department shall hold a conference
12 with the party and provide all reasonable information and an explanation of the charges
13 assessed. If the matter cannot be resolved informally, the director shall designate a hearing
14 officer to decide the petition. The hearing officer shall be in neither a subordinate nor a
15 supervisory or managerial position to any staff involved in making the initial determination
16 of the fee assessment. A hearing shall be conducted in person, by telephone, or by video
17 conference at which all relevant evidence will be admissible. The hearing officer shall
18 prepare a written final decision to approve or deny the petition.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:
20 Section 25150.84(a), Health and Safety Code.

21
22 ~~§ 69600.8. [Reserved]~~

23 ~~§ 69600.9. [Reserved]~~

24 ~~§ 69600.10. [Reserved]~~

per agency
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25 ~~§ 69600.11. [Reserved]~~

26 ~~§ 69600.12. [Reserved]~~

27 ~~§ 69600.13. [Reserved]~~

28 ~~§ 69600.14. [Reserved]~~

29 ~~§ 69600.15. [Reserved]~~

30 ~~§ 69600.16. [Reserved]~~

31 ~~§ 69600.17. [Reserved]~~

1 ~~§ 69600.18. [Reserved]~~

2 ~~§ 69600.19. [Reserved]~~

3 ~~§ 69600.20. [Reserved]~~

per agency
request