

§2135. UNFAIR AND PREDATORY PRICING.

(a) Complaints submitted pursuant to Section 14588.2 of the Act shall be filed on the

Predatory Pricing Complaint Form, DOR 51 (Rev. 01/02) and shall contain all of the following information:

(1) The complainant's name, address, telephone number, facility or business name, and certification number. The complainant shall meet the requirements of Section 2000(a)(36.5) of these regulations.

(2) The name and address and, if known, the telephone number, certification number, and the owner/representative of the supermarket site recycling center alleged to have engaged in unfair and predatory pricing (hereinafter "respondent").

(3) A summary of the facts and allegations which form the basis of the complaint,

including, but not limited to, all of the following:

(A) The date on which the alleged unfair and predatory pricing took place.

(B) The type of beverage container(s) in question.

(C) The amount paid for the beverage containers in question.

(4) A statement declaring the truth of the information and allegations contained in the complaint and the complainant's dated signature, signed under penalty of perjury.

(b) A complaint must be submitted within 60 days of the alleged occurrence that forms the basis of the complaint.

(c) A complaint will be deemed "received" by the Division, within the meaning of Section 14588.2 of the Act, only if it is submitted on the form prescribed by the Division and is determined by the Division to be complete.

(1) To be complete, a complaint shall contain all of the information required in subsection (a) above and shall comply with the requirements of Section 14588.2(a) of the Act.

(2) Once a complaint is deemed received, the Division shall mail copies of the received complaint to the complainant and the respondent. Each copy shall be clearly marked with the date that the complaint was deemed received.

(3) Upon notification by the Division that a complaint is incomplete pursuant to paragraph (c)(1) above, the complainant shall have ten calendar days in which to provide the information needed to complete the complaint. Any complaint that remains incomplete for more than ten calendar days after the complainant has been notified shall be rejected by the Division and may not be resubmitted by the complainant.

(d) The subject of a complaint submitted pursuant to Section 14588.1 of the Act must be a supermarket site that receives handling fees.

(1) A supermarket site is a "supermarket site that receives handling fees", as that term is used in Section 14588.1, if the Division determines that a

handling fee payment was disbursed to the supermarket site within sixty days before the date of the alleged unfair and predatory pricing.

(2) A complaint will be deficient on its face and rejected without further investigation, if the Division determines that the condition described in paragraph (d)(1) has not been satisfied.

(e) Upon the Division's receipt of a completed complaint regarding a supermarket site that receives handling fees, the Division shall conduct an audit as required by Section 14588.2 of the Act. The Division may conduct field visits and inspect recycler records in conducting the audit.

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(1) The Division shall audit a three-day period, including the date of the alleged

occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(A) No later than five days after being notified of the Division's audit, each recycling center subject to the audit shall provide the Division with the records necessary to complete the audit. The necessary records include, but are not limited to, receipts, logs, and daily summaries. The records may be submitted to the Division via mail or facsimile, or made available to Division staff conducting a field visit to the recycling center.

(B) A recycling center's failure to provide timely or accurate information pursuant to paragraph (e)(1)(A) above is grounds for discipline pursuant to Sections 14591.1 and 14591.2 of the Act.

(2) The Division shall use the data compiled pursuant to paragraph (e)(1)(A) to calculate the average scrap value paid per pound by specified recycling centers.

(3) For purposes of this section, "average scrap value paid" is the per-pound average paid by all specified recycling centers over the three-day period in question, for the material or materials listed in the complaint, exclusive of the refund value. This is calculated by dividing the total amount paid for all audited transactions (\$sum) less the total refund value paid for all audited transactions (CRV sum) by the total weight purchased for all audited transactions (#sum)

as follows:

$\$sum - CRV \text{ sum} = \text{average scrap value paid}$

$\# \text{ sum}$

(4) Per Section 14588.1(b) of the Act, and for purposes of this section, "specified recycling centers" are those that did not receive handling fees in three or more of the 12 whole months immediately preceding the date of the alleged violation.

(5) The audit will be limited to recycling centers located within either a five-mile or a ten-mile radius of the respondent as specified by Section 14588.1(a)(2) of the Act.

(f) Upon completing the audit required in Section 14588.2 of the Act, the Director, or the Director's designee, shall determine whether there is probable cause to believe that the respondent has engaged in unfair and predatory pricing.

(1) If the Director/designee determines that such probable cause exists, the Department shall convene an informal hearing pursuant to subsection (c) of Section 14588.2. The informal hearing shall be conducted pursuant to Chapter 4.5 (commencing with Section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the Director/designee determines that probable cause does not exist, the Division shall notify both the complainant and the respondent of this finding and the complaint shall be dismissed pursuant to paragraph (c)(5)(A) of Section 14588.2 of the Act. The Division shall also resume payment of handling fees to the respondent, including payment of handling fees withheld pending resolution of the pending complaint, if the respondent is otherwise eligible to receive those handling fees.

Authority: 14530.5(b) and 14536, Public Resources Code. Reference: Sections 14588, 14588.1, 14588.2, 14591.1 and 14591.2 Public Resources Code.