

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO ADMINISTRATIVE HEARING PROCEDURES - "ADMINISTRATIVE PENALTY PROGRAM"

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider amendments to regulations found in section 60065 et seq. (Administrative Hearing Procedures for the Review of Complaints) and section 60075 et seq. (Administrative Hearing Procedures for the Review of Citations) of title 17, California Code of Regulations (CCR). ARB staff is proposing modifications to these regulations to implement the relevant provisions of Senate Bill (SB) 527. SB 527 authorizes ARB to impose administrative penalties as an alternative to pursuing civil penalties through the courts ("Administrative Penalty Program").

DATE: December 12, 2002

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Central Valley Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., December 12, 2002, and may continue at 8:30 a.m., December 13, 2002. This item may not be considered until December 13, 2002. Please consult the agenda for the meeting, which will be available at least ten days before December 12, 2002, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact ARB's Clerk of the Board by November 27, 2002 at (916) 322-5594 or TDD (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Proposed Amendment to title 17, CCR sections 60065.1 through 60065.45, and 60075.1 through 60075.45.

Background:

Most enforcement actions brought by the Air Resources Board (ARB) are resolved through negotiated settlements. In a negotiated settlement, the source is brought into compliance as quickly as possible and pays a monetary settlement in lieu of civil penalties. In those cases where ARB is unable to reach an acceptable settlement with a violator, the matter must be pursued in the courts. This process, while necessary, is both costly and cumbersome. In 1990, the Legislature authorized the ARB to adopt an administrative hearing process to adjudicate violations of the Heavy-Duty Vehicle Inspection Program (HDVIP) and assessment of administrative civil penalties (Health and Safety Code section 44011.6). That authority was expanded in 1995, with the adoption of chapter 1.5 of part 5 of division 26 of the Health and Safety Code, which provided the ARB with authority to establish, among other things, administrative procedures to assess and adjudicate civil penalties for violations of ARB fuel-related regulations. (See Health and Safety Code sections 43028 and 43031.)

Prior to the enactment of SB 527, all other provisions of division 26 of the Health and Safety Code within the ARB's purview could only be enforced judicially. In SB 527, the Legislature enacted Health and Safety Code sections 42410 and 43023. These sections expand ARB's authority to impose administrative civil penalties as an alternative to judicial civil penalties. SB 527 limits the amount that the ARB may assess as an administrative penalty to \$10,000 per violation per day with a maximum assessment not to exceed \$100,000. In no event may administrative penalties for a violation exceed the judicial civil penalty that could be assessed under the Health and Safety Code for that violation.

The legislation also specifically directs the ARB to use its existing administrative hearing regulations to implement the penalty assessment program. To this end, staff is proposing modifications to title 17, CCR section 60065.1 et seq. (Administrative Hearing Procedures for the Review of Complaints) and CCR section 60075.1 et seq. (Administrative Hearing Procedures for the Review of Citations) to address the specific directives of the legislation. In initially adopting administrative hearing procedures, the ARB established a two-tiered enforcement hearing process. This process provides for complaints to be issued for the more serious and complex violations – subject to higher penalty assessments – and citations to be issued for less serious, less complex, and more clear cut violations.

Staff's Proposal

Staff's proposal would broaden the existing administrative penalty assessment and hearing procedures to allow for the issuance of administrative citations and complaints for all violations covered by SB 527. The existing administrative penalty provisions that provide for the issuance of citations and fuel-related complaints would remain unchanged. Because of the different maximum penalties that may be assessed for fuel violations and those violations covered under SB 527, the amendments would

separately set forth the ARB's authority to assess penalties for violations covered by SB 527.

In response to other directives of SB 527, the staff has proposed the following modifications to title 17, CCR section 60065.1 et seq. and CCR section 60075.1 et seq.:

- Clarify that an administrative civil penalty would be issued as an alternative to a judicial civil penalty and not be cumulative;
- Make clear that ARB's administrative penalty authority only extends to those categories of violations for which it maintains authority to impose judicial civil penalties;
- Clarify that an administrative law judge appointed by the Department of General Services, State Office of Administrative Hearings (OAH) would conduct all hearings authorized by Health and Safety Code section 42410 and section 43023;
- Amend both hearing procedure regulations to add civil penalty limits in accordance with SB 527; and
- Amend the existing criteria used for assessing penalties for fuel violations to also apply to assessments for violations covered under Health and Safety Code section 43023 and adding a new provision establishing penalty assessment criteria for violations covered under Health and Safety Code section 42410;

Additionally, the staff is proposing to make other minor modifications to the hearing procedures for purposes of clarity and conformity with other state administrative hearing procedures.

Comparable Federal Regulations

Federal administrative hearing procedure regulations do exist, but they do not apply to matters heard under the proposed amendments to ARB's administrative hearing procedures.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a ISOR for the Proposed Regulatory Action, which includes a summary of the environmental impacts if any, of the proposal.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's website listed below, or may be obtained from the Board's Public Information Office, 1001 I Street, Environmental Services Center, 1st Floor, Sacramento, California 95814, phone number (916) 322-2990, at least 45 days prior to the scheduled hearing (December 12, 2002).

Any substantive inquiries regarding this matter may be directed to the designated agency contact persons: Mr. Paul Jacobs, Chief, Mobile Source Enforcement Branch, (916) 322-7061 and Ms. Judy Lewis, Air Pollution Specialist at (916) 322-1879.

Further, the agency representative and designated back-up contact persons to whom procedural inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board staff has compiled a record which includes all information upon which the proposal is based. This is available for inspection at the ARB during regular business hours upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the Final Statement of Reasons for Rulemaking (FSOR) when completed, is or will be available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/adminpen/adminpen.htm or www.arb.ca.gov/enf/admpenal/admpenal.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(5) & (6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other non discretionary savings to state or local agencies.

The Executive Officer has also made an initial determination that adoption of the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

In developing this regulatory proposal, the ARB staff evaluated potential economic impacts on representative private persons or businesses. The Executive Officer is not aware, pursuant to Government Code section 11346.5(a)(9), of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

In accordance with Government Code section 11346.3 the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses.

Before taking final action on the proposed regulatory action, the ARB must determine that no reasonable alternative considered by the ARB or that has otherwise been identified and brought to the attention of the ARB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board **no later than 12:00 noon, December 11, 2002** and addressed to the following:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, CA 95814

Electronic mail is to be sent to: adminpen@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon December 11, 2002** or received by the Clerk of the Board at the hearing.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than **12:00 noon, December 11, 2002**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements are filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY

This regulatory action is proposed under that authority granted in sections 39600, 39601, 42410, 43023, 43028, 43031(a) and 44011.6(m), of the Health and Safety Code.

This action is proposed to implement, interpret and make specific relevant provisions of Senate Bill 527 (Sher; Stats, 2001, Chaptered 769) codified at sections 39010, 39514, 39600, 39601, 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, 42403, 42410, 43008.6, 43102, 43106, 43021, 43023, 43026, 43027, 43028, 43029, 43030, 43031(a), 43154, 43201, 43211, 43212, and 44011.6 of the Health and Safety Code and Government Code sections 6250 et seq., 11500, 11181, 11182, 11184–11188, 11189, 11191, 11340.1-11340.5, 11415.60, 11425.30, 11425.40, 11430.70–11430.80, 11435.25, 11435.30, 11435.55, 11440.30, 11440.50, 11450.05–11450.30, 11455, 11455.30, 11505.3, 11507.6, 11507.7, 11509, 11511, 11512, and 11525. Code of Civil Procedure sections 1013, 1013(a), 1094.5, 1985-1985.4, 1987, and 1988, 13 CCR, sections 2048 and 60075.1, title 17 CCR, sections 60065.9, 60075.1, and 91000 et seq., and Mathews v. Eldridge, 424 U.S. 319 (1976).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the Board's Public Information Office, Air Resources Board, 1001 I Street, Environmental Services Center, 1st Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: October 15, 2002

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.arb.ca.gov.