

## Attachment B

Title 17, California Code of Regulations, Chapter 1,  
Subchapter 1.25, Article 2.5 Administrative Procedures for Review of Executive Officer  
Determinations Regarding Service Information for 1994 and Subsequent Model Year  
Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles and 2007  
and Subsequent Model Year Heavy-Duty Engines

This document is printed in a style to indicate changes from the existing provisions in title 17, California Code of Regulations, sections 60060.1 through 60060.34. All existing language is indicated by plain type. All proposed additions to language are indicated by underlined text. All proposed deletions to language are indicated by ~~strikeout~~.

## Final Regulation Order

Title 17, California Code of Regulations, Chapter 1, Subchapter 1.25, reads as follows:

Article 2.5. Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles and 2007 and Subsequent Model Year Heavy-Duty Engines.

### Subarticle 1. General Provisions

#### § 60060.1. Applicability.

(a) This article governs review of Executive Officer determinations regarding compliance with the provisions of Health and Safety Code section 43105.5, and its implementing regulations, title 13, California Code of Regulations, section 1969 et seq.

(b) The provisions of this article apply only to determinations issued on or after the effective date of this article.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: 43105.5(e) and (f), Health and Safety Code; Sections 11500, et seq., Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### § 60060.2. Definitions.

(a) The definitions applicable to these rules include those set out in the Health and Safety Code (commencing with section 39010) and in Title 13, California Code of Regulations, section 1969(c). The definitions set forth in Title 17, California Code of Regulations, section 60065.2 shall also be applicable to the extent that such definitions do not conflict with any terms as defined below. To the extent that any definition in section 60065.2 is applicable to these hearing procedures, any reference to a section within Article 3 that is set forth in that definition shall be read as the parallel section within this Article.

(b) The following definitions also apply:

(1) "Executive Officer" is the Executive Officer of the state board and employees of the state board authorized to represent the Executive Officer in the determination made pursuant to title 13, CCR, section 1969(j).

(2) "Interested Party" shall mean the covered person who filed the underlying request for audit that led to the issuance of a notice to comply.

(3) "Party" refers to the Executive Officer, ~~or~~ motor vehicle manufacturer or engine manufacturer appearing before a hearing officer in a hearing to review an

Executive Officer determination against the motor vehicle manufacturer or engine manufacturer for noncompliance with Health and Safety Code section 43105.5 and title 13, California Code of Regulations section 1969 and also to an person whose motion to intervene has been granted pursuant to section 60060.8.

(4) "Request for Review" refers to the document requesting an administrative hearing that may be filed by a motor vehicle manufacturer, an engine manufacturer, or the Executive Officer.

(5) "Response" means a document that is responsive to the request for review filed by a party opposed to the review or the relief requested.

NOTE: Authority cited: Sections 39010, 39600, and 39601, Health and Safety Code. Reference: Part 5, (commencing with 39010) and Sections, 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.3. Right to Representation.**

(a) A party may appear in person or through a representative, who is not required to be an attorney at law. The right to representation is at the party's own expense. Following notification that a party is represented by a person other than him or herself, all further communications regarding the proceedings shall be directed to that representative.

(b) A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding. Persons who appear as representatives shall not engage in unethical conduct or intentionally fail to observe the procedures set forth in these rules and the proper instructions or orders of the hearing officer.

(c) A representative may withdraw an appearance by filing a written notice of withdrawal with the hearing office and by serving a copy on all parties.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.4. Time Limits; Computation of Time.**

(a) All actions required under these rules shall be completed within the times specified in this article, unless extended by the hearing officer after a showing of good cause and consideration of prejudice to other parties. Requests for extensions of time for the filing of any pleading, letter, document, or other writing or completing any other required action must be received in advance of the date on which the filing or action is due and should contain sufficient facts to establish a reasonable basis for the relief requested.

(b) In computing the time that a person has to perform an act or exercise a right, the day of the event initiating the running of the time period shall not be included and the last day of the time period shall be included. If the last day falls on a Saturday, Sunday, or a state holiday, time shall be extended to the next working day.

(c) In computing time, the term "day" means calendar day, unless otherwise provided.

(d) Unless otherwise indicated by proof of service, the mailing date shall be presumed to be the postmark date appearing on the envelope if first-class postage was prepaid and the envelope was properly addressed.

(e) Where service of any pleading, petition, letter, document, or other writing is by mail, overnight delivery, or facsimile transmission (fax), pursuant to section 60060.5(c), and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time that such right may be exercised or act performed shall be extended as provided in section 60060.5(c).

(f) Papers delivered to or received by the hearing office during regular business hours (8 a.m. to 5 p.m.) will be filed on that date. Papers delivered or received at times after regular business hours will be filed on the next regular business day.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.5. Service, Notice and Posting.**

(a) Except as otherwise provided in this article, the original of every pleading, petition, letter, document, or other writing served in a proceeding under these rules shall be filed with the hearing office.

(b) A copy of the request for review shall be concurrently served on all other parties.

(c) Unless otherwise required, service of any documents in the proceedings may be made by personal delivery, by United States first-class or interoffice mail, by overnight delivery, or by fax.

(1) Service is complete at the time of personal delivery.

(2) In the case of first-class mail, the documents to be served must be deposited in a post office, mailbox or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, properly addressed to the person on whom it is to be served at the address as last given by that person on any document filed in the present cause of action and served on the party making service or otherwise at the place of residence of the person to be served. The

service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended five days if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and fifteen days if the place of address is outside the United States.

(3) If served by overnight delivery, or interoffice mail, the document must be deposited in a box or other facility regularly maintained for interoffice mail or by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the address as last given by the person on any document filed in the present cause of action and served on the party making service or otherwise at that place of residence of the person to be served. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended two days.

(4) If served by fax, the document must be transmitted to a fax machine maintained by the person on whom it is served at the fax machine telephone number as last given by that person on any document which he or she has filed in the present cause of action and served on the party making the service. The service is complete at the time of the transmission, but any period of notice and any right or duty to do any act or to make any response within any period or date prescribed after service of the document shall be extended two days.

(d) Each document filed shall be accompanied by a proof of service on each party or its representative of record on the date of service. The proof of service shall state whether such service was made personally, first-class mail, overnight delivery, or fax.

(1) Where service is made by personal delivery, the declaration shall show the date and place of delivery and the name of the person to whom the documents were handed. Where the person making the service is unable to obtain the name of the person to whom the documents were handed, the person making the service may substitute a physical description for the name.

(2) Where service is made by first-class mail or overnight delivery, the declaration shall show the date and place of deposit in the mail, the name and address of the person served as shown on the mailing envelope and that the envelope was sealed and deposited in the mail with the postage fully prepaid.

(3) Where service is made by fax, the declaration shall show the method of service on each party, the date sent, and the fax number to which the document was sent.

(e) The proof of service declaration shall be signed by the person making it and contain the following statement above the signature: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed at (City, State) on (Date)." The name of the declarant shall be typed and signed below this.

(f) Proof of service made in accordance with the California Code of Civil Procedure section 1013a complies with this regulation.

(g) Service and notice to a party who has appeared through a representative shall be made upon such representative.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11182 and 11184, Government Code; Sections 1013 and 1013a, California Code of Civil Procedure; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.6. Motions.**

(a) Any motion or request for action by the hearing officer filed by any party, except those made orally on the record at a hearing, shall be in writing and filed with the hearing officer, with written notice and proof of service to all parties. The caption of each motion shall contain the title and docket number of the proceeding and a clear and plain statement of the relief sought and supporting rationale.

(b) Except as otherwise provided by statute or these regulations, or as ordered by the hearing officer, a motion shall be made and filed at least 15 days before the date set for the motion to be heard or the commencement of the hearing on the merits. Any response to the motion shall be filed and served no later than five days before the motion is scheduled to be heard or as ordered by the hearing officer.

(c) The hearing office shall set the time and place for the hearing of the motion. The hearing shall occur as soon as practicable.

(d) Except as otherwise provided by statute or these regulations, the hearing officer may decide a motion filed pursuant to this section without oral argument. Any party may request oral argument at the time of the filing of the motion or the response. If the hearing officer orders oral argument, the party requesting oral argument, or any party directed to do so by the hearing officer, shall serve written notice on all parties of the date, time and place of the oral argument. The hearing officer may direct that oral argument be made by telephone conference call. The hearing officer may order that the proceedings be recorded.

(e) The hearing officer shall issue a written order deciding any motion, unless the motion is made during the course of the hearing on the merits while on the record. The hearing officer may request that the prevailing party prepare a proposed order.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.7. Form of Pleadings.**

(a) Except as otherwise expressly provided in this article or by the hearing officer, there are no specific requirements as to the form of documents filed in a proceeding under these rules.

(b) The filing party or its representative shall sign the original of any pleading, letter, document, or other writing (other than an exhibit). The signature constitutes a representation by the signer that it has read the document, that to the best of its knowledge, information and belief, the statements made therein are true, and that it has not filed the document for the purpose of delay.

(c) The initial document filed by any person shall indicate his or her status (as a party or representative of the party) and shall contain his or her name, address and telephone number. Any changes in this information shall be communicated promptly to the hearing office and all parties to the proceeding. A party who fails to furnish such information and any changes to it shall be deemed to have waived his or her right to notice and service under these rules.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.8. Motion to Intervene.**

(a) Any person may file a motion to intervene.

(b) The hearing officer shall grant, as a matter of right, a timely written motion to intervene filed by an interested party to the determination for which review has been requested.

(c) As to other persons, the hearing officer may grant such a motion to intervene if all of the following conditions are satisfied:

(1) The motion is in writing, with copies served on all parties named in the request for review.

(2) The motion is made as early as practicable.

(3) The motion states facts demonstrating that the proceeding will substantially affect the requesting person's legal rights, duties, privileges, or immunities.

(4) The hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(d) Upon a motion filed under paragraph (b) or (c) being granted, the hearing officer may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a later time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.9. Limitations on Written Legal Arguments or Statements**

(a) Any written legal argument or statement submitted to the hearing officer by a participant in an action under this part shall be double spaced and typed in a font size 12 point or larger. Except as otherwise provided by this part, or otherwise authorized by the hearing officer for good cause shown, no written legal argument, exclusive of any supporting documentation, may exceed:

(1) Fifteen pages, for arguments in support of or opposition to motions;  
and

(2) Five pages, for reply arguments.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.10. Interpreters and Other Forms of Accommodation.**

(a) In proceedings where a party, a party's representative, or a party's expected witness requires an interpreter for any language, including sign language, that party shall be responsible for notifying the hearing office as soon as the requirement is known, but no later than ten days prior to the first day of hearing. The hearing officer may allow later notification for good cause. The hearing office shall be responsible for securing the interpreter, and for providing reasonable accommodation.

(b) The state board shall pay the cost of interpreter services if the hearing officer so directs. In determining who should pay the cost of the interpreter, the hearing officer shall base the decision on equitable considerations, including the ability of the party in need of the interpreter to pay the cost.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10 11435.25, 11435.30 and 11435.55, Government Code; Section 751, Evidence Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

## **Subarticle 2. Hearing Officers**

### **§ 60060.11. Authority of Hearing Officers.**

(a) The hearing officer shall have authority to review matters arising under Health and Safety Code section 43105.5 and title 13, CCR, section 1969(k). Such authority shall include those matters in which:

(1) A motor vehicle manufacturer or engine manufacturer has contested a notice to comply that has been issued by the Executive Officer because the motor vehicle manufacturer or engine manufacturer has allegedly failed to comply with the provisions of section 43105.5 or the implementing regulations, title 13, CCR, section 1969;

(2) The Executive Officer has requested review and issuance of a compliance order against a motor vehicle manufacturer or engine manufacturer who has failed to request review of a notice to comply and has not filed a compliance plan as required by the notice to comply; and

(3) The Executive Officer has rejected a compliance plan submitted by a motor vehicle manufacturer or engine manufacturer pursuant to section 43105.5(e); and

(4) The Executive Officer has requested review and issuance of a compliance order against a motor vehicle manufacturer or engine manufacturer that has failed to comply with the terms of an approved compliance plan.

(b) Except as may be specifically limited in title 13, CCR, section 1969, in any matter subject to review pursuant to these rules, the hearing officer shall have the authority to do any act and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules, including, but not limited to, authority to hold prehearing conferences; conduct hearings to determine all issues of fact and law presented; to rule

upon motions, requests and offers of proof, dispose of procedural requests, and issue all necessary orders; administer oaths and affirmations and take affidavits or declarations; to issue subpoenas and subpoenas duces tecum for the attendance of a person and production of testimony, books, documents, or other things; to compel the attendance of a person residing anywhere in the state; to rule on objections, privileges, defenses, and the receipt of relevant and material evidence; to call and examine a party or witness and introduce into the hearing record documentary or other evidence; to request a party at any time to state the respective position or supporting theory concerning any fact or issues in the proceeding; to certify official acts; to extend the submittal date of any proceeding; to hear and determine all issues of fact and law presented and to issue such interlocutory and final orders, findings, decisions, and appropriate remedies, including penalties, as may be necessary for the full adjudication of the matter.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11181-11182 and 11425.30, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.12. Disqualification.**

(a) The hearing officer shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing.

(b) A hearing officer may not hear any case in which he or she has previously served as an investigator, prosecutor, or advocate.

(c) Any party may request the disqualification of a hearing officer by filing an affidavit or declaration under penalty of perjury. A request against the hearing officer must be made no later than five days prior to the commencement of a prehearing conference or first day of hearing on the merits, whichever is earlier. The affidavit or declaration must state with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined, in the first instance, by the hearing officer against whom the request for disqualification has been filed.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10, 11425.30, 11425.40 and 11512, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **Subarticle 3. Ex Parte Communications**

#### **§ 60060.13. Prohibited Communications.**

(a) Except as otherwise provided in this section, while the proceeding is pending, the hearing officer shall not participate in any communications with any party,

representative of a party, or any person who has a direct or indirect interest in the outcome of the proceeding about the subject matter or merits of the case at issue, without notice and opportunity of all parties, to participate in communication.

(b) No pleading, letter, document, or other writing shall be filed in a proceeding under these rules by a party unless service of a copy thereof together with any exhibit or attachment is made on all other parties to a proceeding. Service shall be in a manner as prescribed in section 60060.5.

(c) For the purpose of this section, a proceeding is pending from the time that a request for review is first filed with the hearing office.

(d) Communications prohibited under paragraph (a) do not include communications concerning matters of procedure or practice, including requests for continuances that are not in controversy.

(e) A communication between a hearing officer and an employee of the state board that would otherwise be prohibited by this section is permissible if the employee is another employee of the hearing office whose job duties include aiding the hearing officer in carrying out the hearing officer's adjudicative responsibilities. Upon request, the hearing office will provide a list of employees of the hearing office to the parties. The prohibitions of paragraph (a) that apply to the hearing officer shall also apply to such other employees employed in the hearing office. Communications permitted under this paragraph shall not furnish, augment, diminish, or modify the evidence in the record.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10, 11430.70 - 11430.80, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.14. Disclosure of Communication.**

(a) If, while the proceeding is pending, but before serving as hearing officer, the hearing officer receives a communication of a type that would be in violation of this subarticle if received while serving as hearing officer, he or she shall, promptly after starting to serve, disclose the content of the communication on the record and give all parties an opportunity to address it as provided below.

(b) If a hearing officer receives a communication in violation of this article, the hearing officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the hearing officer to the communication; and

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the hearing officer, and the identity of each person from whom the hearing officer received the communication.

(c) The hearing officer shall notify all parties that a communication described in this section has been made a part of the record.

(d) If a party requests an opportunity to address the communication within ten days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The hearing officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

(e) Receipt of ex parte communications may be cause for disqualification of the hearing officer.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.10 and 11430.10 et. seq., Government Code; Section 1969, title 13, California Code of Regulations Sections 11425.10 and 11430.10 et. seq., Government Code; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **Subarticle 4. Filing Requests for Administrative Hearing Review**

##### **§ 60060.15. Requests for Review by a Motor Vehicle Manufacturer or Engine Manufacturer.**

(a) A motor vehicle manufacturer or engine manufacturer may file a request that a hearing officer review an Executive Officer determination to issue a notice to comply against the motor vehicle manufacturer or engine manufacturer, pursuant to Health and Safety Code section 43105.5(e) and title 13, CCR, section 1969(j).

(b) The motor vehicle manufacturer or engine manufacturer shall file the request for hearing within 30 days from the date that the Executive Officer issues a determination to issue a notice to comply. The hearing officer may, for good cause, extend the time for such filing.

(c) A failure to file a timely request for hearing of the Executive Officer's determination to issue a notice to comply, without alternatively serving on the Executive Officer a compliance plan as required by title 13, CCR, section 1969(j)(8), will result in the Executive Officer determination becoming final. The manufacturer's failure to pursue administrative review could subject the manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and title 13, CCR, section 1969(l).

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections, 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.16. Requests for Review by the Executive Officer**

(a) The Executive Officer shall file a request for hearing officer review and issuance of a compliance order when:

(1) The Executive Officer has issued a notice to comply against a manufacturer and the manufacturer has failed to either request administrative review of the determination, or, in the alternative, to submit a compliance plan as required under Title 13, CCR, section 1969(j)(8). The Executive Officer shall file the request for review within 30 days from the last day that the manufacturer had to file either a request for review of the determination with the hearing office or submit a compliance plan to the Executive Officer.

(2) A motor vehicle manufacturer or engine manufacturer has submitted a compliance plan pursuant to Title 13, CCR, section 1969(j)(8), and the Executive Officer has determined pursuant to the procedures set forth in section 1969(j)(9) that the compliance plan is unacceptable. The Executive Officer shall file the request for review within 30 days from the date that he or she issues the determination.

(3) A motor vehicle manufacturer or engine manufacturer has had a compliance plan approved pursuant to Title 13, CCR, section 1969(j)(9) but has failed to comply with the terms of the plan.

(b) The hearing officer may, for good cause, extend the time for such filing.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.17. Content of a Request for Review.**

A request for review is not required to follow any particular form or format. But the request for review shall include all of the following.

(a) The signature of the requesting party or its designated representative.

(b) Copies of and specific reference to the respective determination of the Executive Officer that is the subject of the request for review (i.e., the notice to comply issued against the motor vehicle manufacturer or engine manufacturer, or the determination rejecting the motor vehicle manufacturer's or engine manufacturer's compliance plan).

(c) The correct business address of the requesting party and, if applicable, the name and address of the party's designated representative.

(d) The name and address of any interested party identified in the challenged determination.

(a) A statement of the circumstances or arguments that are the basis of the request for hearing, with specific reference to the evidence that was before the Executive Officer that supports such arguments.

(f) A statement of the proposed relief sought by the requesting party.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.18. Notice of Receipt of Request for Review.**

(a) Upon receipt of a timely request for review, the hearing office shall review the request for completeness.

(b) If the request does not include the information required under section 60060.17, the hearing office shall immediately acknowledge receipt of the request and notify the requesting party of the deficiencies that must be corrected before the request for hearing may be deemed filed and docketed. The requesting party shall have 10 days from the date of mailing the notice of deficiencies to submit a complete request for hearing. If the deficiencies are not corrected within the 10 days or the time provided for initially filing the request in sections 60060.15 through 60060.16, whichever is later, the underlying Executive Officer determination will become final.

(c) If the hearing office finds the request for hearing to be complete, it shall deem the request filed on the date that the request was received and notify the requesting party, the Executive Officer, and any identified interested party that a request for hearing has been filed.

(d) Except as provided in paragraph (f) below, the notice shall inform the parties that:

(1) Copies of these hearing procedures are available from the hearing office and that the procedures set forth at Government Code section 11500 et seq. are not applicable.

(2) Interested parties may file a motion to intervene pursuant to these rules if they wish to participate in the hearing.

(3) The parties shall submit to the hearing office responsive and reply arguments by the dates specified in these procedures.

(4) The parties have the right to be represented by counsel or other representative of their choosing and the right to an interpreter or other necessary accommodation.

(e) Upon being informed that the request for review is complete, the Executive Officer shall forward to the hearing officer, within 15 days from the date of service, a certified copy of the Executive Officer determination that is the subject of the request for review and the investigative record that was compiled during the Executive Officer's investigation.

(f) In those matters in which the Executive Officer has requested review of his or her determination to issue a notice to comply because the manufacturer has failed to contest the notice or, in the alternative, submit a compliance plan, the notice shall inform the parties that no hearing on the merits of the underlying Executive Officer determination will be held. Instead the notice shall inform the parties that the hearing officer will issue a compliance order against the motor vehicle manufacturer or engine manufacturer within 30 days of receipt from the Executive Officer of a certified copy of the Executive Officer determination and investigative record.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Part 5, Health and Safety Code; Section 11425.10, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.19. Response to Request for Review.**

Any party opposed to a filed request for review shall file a response within 30 days after service of the notice of filing by the hearing office. The response shall be in writing and address the issues raised in the request for hearing. The response should include any rebuttal to the issues and arguments raised by the party requesting review, with specific reference to the investigative record that was before the Executive Officer when he or she made a determination that is the subject of the review before the hearing officer. The response shall be in the form of a declaration signed under penalty of perjury.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.20. Reply.**

Within 15 days of receipt of the last submitted response, the party requesting review may file a reply responding to the contentions raised in any response. The reply shall be in the form of a declaration signed under penalty of perjury.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.21. Extensions of Time for Submitting a Response or Reply.**

The time period for submitting a response required under section 60060.19 or a reply under section 60060.20 may be extended:

(1) By stipulation of the parties for 30 additional days to allow the parties to conduct informal settlement negotiations; or

(2) Upon motion to the hearing officer, who may extend the time period for up to 30 days, if the moving party can show good cause and if the other parties are not prejudiced by a delay.

NOTE: Authority cited: Sections 39600 and 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.22. Stays Pending Issuance of Hearing Officer's Decision.**

Pending the hearing officer issuing its decision, a motor vehicle manufacturer or engine manufacturer contesting an Executive Officer determination to issue a notice to comply or to reject a compliance plan submitted in response to a notice to comply shall not be required to take any action in response to the challenged Executive Officer determination.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

## **Subarticle 5. Pre-Hearing Procedures**

### **§ 60060.23. Schedule of Review Proceedings.**

(a) Upon receipt of a request for review, the administrative hearing office of the state board shall assign an administrative law judge to be the hearing officer, unless staffing and other resources of the hearing office would prevent timely consideration of

the matter. If the resources of the administrative hearing office prevent assignment, the administrative hearing office shall refer the matter to the State Office of Administrative Hearings for assignment.

(b) With the consent of the parties, hearings shall be conducted based on the written record certified by the Executive Officer and the written submissions of the parties, whenever possible.

(c) For matters that are to be decided based upon the submitted written record, the hearing officer shall serve upon the parties a schedule setting forth the date that the record will be closed and submitted for decision.

(d) For hearings requiring personal appearances, the hearing officer shall serve upon the parties the dates scheduled for hearing for the purpose of taking evidence. Such hearing shall not be set earlier than 30 days from the date that the notice is served on all parties.

(e) Upon either a motion of the hearing officer or any party, the hearing officer may grant such delays or adjustments to the schedule for the review proceedings as may be necessary or desirable in the interest of fairness. In filing a motion, the moving party shall file the request not less than five days prior to the date set for the action covered by the request and shall submit such evidence to establish good cause for the requested delay or adjustment to the schedule. If the hearing officer orders a delay or adjustment to schedule, he or she shall provide written notice to all parties.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11509 and 11440.30, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

#### **§ 60060.24. Consolidation, Separation of Proceedings.**

(a) Upon the motion of a party or upon the hearing officer's own motion, the hearing officer may consolidate for review and decision:

(1) Any number of proceedings involving the same parties; and

(2) Any number of proceedings involving common issues of law or fact where consolidation would expedite and simplify consideration of the issues and would not adversely affect the rights of the parties.

(b) Upon the motion of a party or upon the hearing officer's own motion, the hearing officer may, in furtherance of convenience or to avoid prejudice, or when separate review proceedings will be conducive to expedition and economy, order a separate review proceeding of any issue or any number of issues, including issues raised in a party's response to a request for hearing.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

**§ 60060.25. Discovery.**

(a) The provisions of this section provide the exclusive right to, and method of, discovery as to any proceeding governed by these review procedures. Nothing in this section prohibits the parties from voluntarily stipulating to exchange any information that they deem appropriate. This section does not authorize the inspection or copying of, any writing or thing that is privileged from disclosure by law or protected as part of an attorney's work product.

(b) No discovery is available to the parties in matters forwarded to the hearing officer for issuance of compliance orders pursuant to section 60060.16(a)(1).

(c) For other hearings, within 30 days from the date of service of the notice of filing, a party may serve on any other party to the proceeding a written request, for the following:

(1) The names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing; and

(2) The opportunity to inspect and make a copy of any thing, document, statement or other writings relevant to the issues for hearing that are in the possession, custody or control of another party to the proceeding and would be admissible in evidence. This includes the following information from the investigative file compiled by the Executive Officer: (i) the names and addresses of witnesses or of persons (other than confidential informants) having personal knowledge of the issues involved in the proceeding, (ii) matters perceived by the investigator in the course of his or her investigation (as opposed to his or her analysis or conclusions), and (iii) statements related to the issues of the proceedings which are otherwise admissible.

(d) The parties subject to the requirements of paragraph (c) shall arrange a mutually convenient time for the exchanging of the names and addresses of witnesses and the inspecting and copying of relevant things, documents, statements, and other writings identified in subparagraph (B) above, but such date shall not be later than 30 days from the date of receipt of the request made pursuant to subparagraph (b)(1). Unless other arrangements are made, the party requesting the writings shall pay for the copying.

(e) Absent a stipulation between the parties, a party claiming that certain writings or things are privileged against disclosure shall, within 15 days of receipt of the request for inspection and copying, serve on the requesting party a written statement setting forth what matters it claims are privileged and the reasons supporting its claims.

(f) A party may file a motion requesting that the hearing officer allow further discovery. The motion shall specify the proposed method of discovery that it would like to use and shall include affidavits describing in detail the nature of the information that the requesting party seeks through discovery, the relevance and probative value of the information, proposed time and place of the discovery (if applicable), and why the need for the information was not previously raised with the Executive Officer during his or her consideration of the determination under review. After fully considering the arguments of the parties, the hearing officer may order such discovery that will promote a full and fair hearing. The hearing officer's order shall set forth the form and method of permissible discovery and the time and place for its occurrence.

(g) Proceeding to Compel Discovery.

(1) Any party claiming that its request for discovery pursuant to this section has not been complied with or that the opposing party has failed to comply with a stipulated agreement to provide discovery may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested or stipulated discovery to comply. The motion shall include the following:

(A) Facts showing the party has failed or refused to comply with a discovery request or stipulation;

(B) A description of the information sought to be discovered;

(C) The reasons why the requested information is discoverable;

(D) Evidence that a reasonable and good faith attempt to contact the noncomplying party for an informal resolution of the issue has been made; and

(E) To the extent known by the moving party, the measures for the noncomplying party's refusal to provide the requested information.

(2) The motion shall be filed within 15 days after the date the requested information was to be made available for inspection and copying or the date a deposition was scheduled to take place and served upon the party who has failed or refused to provide discovery.

(3) The hearing on the motion to compel discovery shall be held within 15 days after the motion is filed, or a later time that the hearing officer may on his or her own motion for good cause determine. The party who has refused or failed to provide discovery shall have the right to serve and file a written answer or other response which shall be due at the hearing office and personally served on all parties at least three days prior to the date set for hearing.

(4) Where the matter sought to be discovered is under the custody or control of the party who has refused or failed to provide discovery and that party asserts that the matter is not a discoverable matter under this section, or is privileged against disclosure, the hearing officer may order that the party in custody lodge with the hearing

office the matters identified in subdivision (b) of section 915 of the Evidence Code, and the hearing officer shall examine the matters in accordance with those provisions.

(5) The hearing officer shall decide the case on the matters examined in a closed meeting, the papers filed by the parties, and such oral argument and additional evidence as the hearing officer may allow.

(6) Unless otherwise stipulated by the parties, the hearing officer shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover. The hearing office shall serve a copy of the order by mail upon the parties. Where the order grants the motion in whole, or in part, the order shall not become effective until ten days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

(7) If after receipt of an order directing compliance with the provisions of these rules regarding discovery, a party fails, without good cause, to comply with the order, the hearing officer may draw adverse inferences against that party and may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f). Health and Safety Code. Reference:; Sections 43105.5(e) and (f), Health and Safety Code; Sections 11189 and 11507.6, Government Code; Section 915(b), Evidence Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

## **Subarticle 6. Contempt and Sanctions**

### **§ 60060.26. Contempt.**

If any person in proceedings before the hearing officer disobeys or resists any lawful order or, if applicable, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing, the hearing officer may certify the facts to the superior court in and for the county where contempt proceedings are held pursuant to Government Code section 11455.20.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.27. Sanctions.**

(a) Notwithstanding the above, the hearing officer may order a party, a party's representative or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions and the failure to comply with a lawful order of the hearing officer.

(2) "Frivolous" means:

(A) Totally and completely without merit, or

(B) For the sole purpose of harassing an opposing party.

(b) An order for sanctions shall be in writing and shall set forth the factual findings that are the basis for the imposition of sanctions.

(1) In determining reasonable expenses, the party or parties to whom payment is to be made shall, at the hearing officer's discretion, either make a statement on the record under oath or submit a written declaration under penalty of perjury setting forth with specificity the expenses incurred as a result of the other party's conduct.

(2) Within five days of the receipt of the hearing officer's order for the payment of expenses, a party or representative may, on the ground of hardship, request reconsideration from the hearing officer issuing the order. The request for reconsideration shall be filed in writing, and include a declaration under penalty of perjury.

(c) The order or denial of an order to pay expenses under paragraph (b) is subject of procedural review in the same manner as a final decision pursuant to Subarticle 11.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455.30 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

## **Subarticle 7. Review Proceedings**

### **§ 60060.28 Failure to Appear.**

If after service of a notice of hearing, including notice of consolidated hearing or continuance, a party fails to appear at a hearing either in person or by representative, the hearing officer may take the proceeding off the calendar or such other appropriate action to insure the rights and interests of all parties under Health and Safety Code section 43105.5 and title 13, CCR, section 1969 et seq.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455.30 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

## § 60060.29. Conduct of Hearings.

(a) All hearings shall be presided over by a hearing officer who shall conduct a full and fair hearing in which all parties have a reasonable opportunity to be heard and to present evidence.

(b) All hearings shall be conducted in the English language, although any party may request the assistance of an interpreter.

(c) In matters brought before the hearing officer pursuant to a request for review filed by the Executive Officer under section 60060.16(a)(1), no hearing on the merits of the underlying Executive Officer determination issuing a notice to comply shall be held. At the hearing officer's discretion, the hearing officer may issue an order to comply without convening a formal hearing.

(d) For all other hearings, subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:

(1) Call and examine witnesses.

(2) Introduce exhibits.

(3) Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations.

(4) Impeach any witness regardless of which party first called the witness to testify.

(5) Call and examine an opposing party as if under cross-examination, even if that party has not testified on its own behalf.

(e) The burden of proof and of going forth with evidence in hearings covered by paragraph (c) shall be as follows.

(1) In all hearings for the review of Executive Officer determinations to issue a notice to comply against a motor vehicle manufacturer or engine manufacturer, to reject a motor vehicle manufacturer's or engine manufacturer's compliance plan, or to seek enforcement of a motor vehicle manufacturer's or engine manufacturer's failure to comply with the terms of an approved compliance plan, the burden of proof and of going forward shall be on the Executive Officer.

(2) At the conclusion of Executive Officer's case-in-chief, the motor vehicle manufacturer or engine manufacturer has the burden of producing evidence to show that no basis exists to support the Executive Officer determination that is under review.

(3) At the close of the motor vehicle manufacturer's or engine manufacturer's presentation of evidence, the parties respectively have the right to introduce rebuttal

evidence that is necessary to resolve disputed issues of material fact, subject to any limits imposed by the hearing officer pursuant to subparagraph (f)(1) below.

(f) The hearing officer may:

(1) Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

(2) Require the authentication of any written exhibit or statement;

(3) Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;

(4) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(5) Restrict attendance because of the physical limitations of the hearing facility; or

(6) Take other action to promote due process or the orderly conduct of the hearing.

(g) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received.

(h) The hearing officer shall base its decision as to whether a motor vehicle manufacturer or engine manufacturer is not in compliance or whether the Executive Officer properly rejected a manufacturer submitted compliance plan upon a preponderance of the evidence.

(i) Hearings shall be recorded electronically or by a court reporter. The record made by the Administrative Hearing Office shall be the official record of the hearing.

(1) A verbatim transcript of the official recording will not normally be prepared, but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.

(2) The official record of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

Note: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 11455.30 and 11525, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

**§ 60060.30. Evidence.**

(a) Oral testimony shall be taken only under oath or affirmation.

(b) The hearing need not be conducted in accordance with technical rules of evidence. Rather, the hearing officer shall admit evidence that is the type of evidence that responsible persons are accustomed to relying upon in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but upon timely objection shall not be sufficient by itself to support a finding unless it would be admissible over objection in a civil court action.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized.

(d) Regarding evidence claimed to be trade secrets or other confidential information, the hearing officer will defer to the findings and conclusions of law made by the superior court pursuant to Health and Safety Code section 43105.5(b) and title 13, CCR, section 1969(i). The hearing officer shall preserve the confidentiality of information determined to be a trade secret and may make such orders as may be necessary, including considering such information in a closed meeting.

(e) In reaching a decision, official notice may be taken, either before or after submission of the proceeding for decision, of any generally accepted technical or scientific matter within the state board's area of expertise, and determinations, rulings, orders, findings and decisions, required by law to be made by the hearing officer.

(1) The hearing officer shall take official notice of those matters set forth in section 451 of the Evidence Code.

(2) The hearing officer may take official notice of those matters set forth in section 452 of the Evidence Code.

(3) Each party shall give notice of a request to take official notice and be given reasonable opportunity on request to present information relevant to:

(A) The propriety of taking official notice; and

(B) The effect of the matter to be noticed.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Sections 451

and 452, Evidence Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

**§ 60060.31. Evidence by Declaration.**

(a) At any time 20 or more days prior to a hearing or a continued hearing, a party may mail or deliver to the opposing party or parties a copy of any declaration which the proponent proposes to introduce in evidence, together with a notice as provided in paragraph (b). Unless an opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the declarant the opposing party's right to cross-examine such declarant is waived and the declaration, if introduced in evidence, shall be given the same effect as if the declarant had testified orally. If an opportunity to cross-examine a declarant is not afforded after a request is made as herein provided, the hearing officer may allow the declaration to be introduced, but it shall only be given the same effect as other hearsay evidence.

(b) The notice referred to in paragraph (a) shall be a separate document concurrently served with the declaration, entitled "Notice of Intent to Use Declaration in Lieu of Oral Testimony." The title shall be in bold print. The content of the notice shall be substantially in the following form:

The accompanying declaration of [insert name of declarant] will be introduced as evidence at the hearing in [insert title and docket number or petition number of proceeding]. [Insert name] will not be called to testify orally and you will not be entitled to question the declarant unless you notify [insert name of the proponent or representative] at [insert address] that you wish to cross-examine the declarant. To be effective, your request must be mailed or delivered to [insert name of proponent or representative] on or before [insert a date 7 days after the date of mailing or delivery of the declaration to the opposing party]."

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

**Subarticle 8. Decisions of the Hearing Officer**

**§ 60060.32. Decisions and Orders of the Hearing Officer.**

(a) Except for compliance orders issued pursuant to or after a request for hearing filed under section 60060.16(a)(1) or otherwise ordered, all proceedings shall be submitted at the time identified by the hearing officer in the schedule for review that has been served upon the parties. Within 30 days of the matter being submitted, the hearing officer shall make findings upon all facts relevant to the issues under review, and file a written decision and order setting forth the reasons or grounds therefore.

(b) If the decision finds that the motor vehicle manufacturer or engine manufacturer has failed to comply with any of the requirements of Health and Safety

Code section 43105.5 or title 13, CCR, section 1969, including the obligation to submit an acceptable compliance plan, the decision shall order the motor vehicle manufacturer or engine manufacturer to come into compliance within 30 days of the effective date of the decision.

(1) The order shall further provide that if the motor vehicle manufacturer or engine manufacturer fails to comply within the 30-day time period set forth above, the hearing officer may order that the motor vehicle manufacturer or engine manufacturer be assessed penalties in an amount not to exceed \$25,000 per day per violation, commencing on the 31st day of noncompliance and continuing until the violation is corrected.

(2) For purposes of this section, a finding by the hearing officer that a motor vehicle manufacturer or engine manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13 CCR, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.

(c) A compliance order issued pursuant to a request for review filed under section 60060.16(a)(1) shall be in writing and issued within 30 days from the date the hearing officer notified the parties that it is in receipt of the documents forwarded by the Executive Officer. The order shall require that the motor vehicle manufacturer or engine manufacturer, within 30 days from the date of the order, correct the noncompliance identified by the Executive Officer in its notice to comply. The hearing officer may order the assessment of penalties for continuing noncompliance after the 30-day grace period consistent with the provisions of paragraphs (b)(1) and (2) above.

(d) The decision or order of the hearing officer is the final decision of the ARB and is effective on the date of issuance.

(e) A copy of the decision or order shall be served on each party or representative.

(f) Within five days of the filing of any decision or order, a party may file a written request that the hearing officer correct a mistake or clerical error.

(1) Pursuant to the party's request or on the hearing officer's own motion, the hearing officer may issue a revised decision or order correcting a mistake or clerical error with respect to any matter respectively covered therein. If the hearing officer makes such a determination, he shall provide written notice to the parties.

(2) A motion filed by a party under this subparagraph shall be deemed denied if the hearing officer has taken no action to address the request within 15 days of filing of the request. In such a case, the decision shall become effective 15 days after the motion was filed.

(3) Within 15 days notifying the parties of his or her intent to modify the decision or order, the hearing officer shall serve a copy of any modified decision or order on each party that had previously been served with the original. The modified decision or order shall supersede the previously served document. The date of service of the modified decision or order shall become the effective date of the document.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 11425.50, Government Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

### **§ 60060.33. Penalty Assessment**

In determining the appropriate conditional daily penalties that a motor vehicle manufacturer or engine manufacturer may be subject to under Health and Safety Code section 43105.5(f) and these regulations, the hearing officer shall consider the following factors.

- (a) The extent of noncompliance by the motor vehicle manufacturer or engine manufacturer.
- (b) The harm caused by the noncompliance to the covered person and other persons, as well as any violations to public health and safety and to the environment.
- (c) The nature and persistence of the noncompliance.
- (d) The compliance history of the motor vehicle manufacturer or engine manufacturer, including the history of past noncompliance.
- (e) The efforts made to comply, and any special circumstances preventing or delaying compliance.
- (f) The cooperation of the motor vehicle manufacturer or engine manufacturer during the course of the Executive Officer's investigation.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Section 43105.5 Health and Safety Code; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.

## **Subarticle 9. Judicial Review**

### **§ 60060.34. Judicial Review.**

(a) Except as provided in paragraph (b) below, a party adversely affected by the final decision of the hearing officer may seek judicial review by filing a petition for a writ of mandate in accordance with section 1094.5 of the California Code of Civil Procedure. Such petition shall be filed within 30 days after the order or decision becomes final.

(b) A motor vehicle manufacturer or engine manufacturer adversely affected by a compliance order issued pursuant to section 60060.33(a) may only request judicial review of a penalty assessment and not the merits of the underlying notice to comply, which the manufacturer never itself contested.

(c) The state board may seek to enforce a final order or decision in superior court in accordance with applicable law.

NOTE: Authority cited: Sections 39600, 39601, 43105.5(e) and (f), Health and Safety Code. Reference: Sections 43105.5(e) and (f), Health and Safety Code; Section 1094.5, California Code of Civil Procedure; Section 1969, title 13, California Code of Regulations; and Mathews v. Eldridge (1976) 424 U.S. 319.