



Winston H. Hickox
Agency Secretary

Air Resources Board

Alan C. Lloyd, Ph.D.
Chairman

9528 Telstar Avenue • P.O. Box 8001 • El Monte, California 91731 • www.arb.ca.gov



Gray Davis
Governor

Mail-Out #MSO 2001-09

July 19, 2001

TO: All Manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles
All Independent Service Repair Facilities
All Manufacturers of Aftermarket Parts
All Other Interested Parties

SUBJECT: PROPOSED REGULATIONS FOR THE CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION RULEMAKING (REVISED)

On April 18, 2001, Air Resources Board (ARB) staff held a public workshop at which draft regulations were proposed pursuant to Senate Bill 1146. These regulations would make available for purchase emission-related service information and other information to ensure wide availability of diagnostic scan tools, reprogramming equipment and emission-related replacement components. Most of this information would be required to be accessible from Internet websites created by motor vehicle manufacturers. Both during and subsequent to the workshop, staff received numerous comments regarding its proposal.

After careful consideration of these comments and the United States Environmental Protection Agency's (U.S. EPA's) recent notice of proposed rulemaking (NPRM) related to the federal service information regulations, the staff has made several revisions to the proposal as summarized below:

The ARB staff requests comments on its latest proposal, which will be considered before finalizing the Public Hearing notice and staff report for consideration of this item at the December 2001 Board Hearing.

Global Document Changes:

- The term "available" has been amended to "available for purchase" to clarify that reasonable costs are associated with obtaining the information made available.
- The implementation of the regulation has been revised to no later than 90 days after the effective date of the regulation or January 1, 2003, whichever is later, for vehicles introduced into commerce on or before these dates. Manufacturers must

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: <http://www.arb.ca.gov>.

California Environmental Protection Agency

provide information for all other vehicle models no later than 90 days after such vehicles are introduced into commerce or concurrently with availability of the information to franchised dealerships, whichever comes first.

Summary of Changes to Title 13, California Code of Regulations (CCR) §1969:

§1969(b). Severability of Provisions. This subsection was added to specify that the invalidation of any portion of the section does not cause the remainder of the section to become invalid.

§1969(c)(3). The definition of “covered person” has been modified to also apply to persons that service vehicle fleets.

Several companies with vehicle fleets, most notably public utility companies, commented that they perform their own vehicle maintenance and repair, and therefore, need access to the same service information and tools as do other independent service providers. ARB staff agrees and believes that the intent of Senate Bill 1146 was not to exclude such companies that employ their own service technicians to maintain fleet vehicles.

§1969(c)(9). To balance the effects of costs to both the seller and the purchaser, two additional factors have been added for consideration when determining “fair, reasonable, and nondiscriminatory price.” They are: 1) the average cost of service information to a covered person, and 2) the ability of the average covered person to afford the information.

§1969(d)(2). OBD II descriptions would only be required to be made available for purchase for 1996 and later model years in accordance with section 43105.5(a)(4) of the Health and Safety Code.

§1969(d)(2)(G). For clarification, the phrase “identification and scaling” has been added to the beginning of the statement for mode 6 data.

Former §1969(d)(3) has been moved to §1969(f)(3) because its content is more applicable to reprogramming information.

§1969(d)(4). Motor vehicle manufacturers would not be required to provide initialization procedures that allow integral vehicle security systems to be breached. ARB staff has determined that this modification is consistent with the intent of Senate Bill 1146.

§1969(e)(1). A small-volume exemption has been included for motor vehicle manufacturers that produce less than 300 motor vehicles annually in California (based on average sales of the three previous model years). Under this provision, manufacturers would have the option to waive the requirement to provide service information on individual Internet sites and instead, these manufacturers must provide the Executive Officer with another viable option for providing the information. At a

minimum though, a basic website should be provided that describes how the desired information can be obtained by other business means.

Flexibility would be extended to such small-volume manufacturers because their expected requests for service information should be quite low, thus making the development of comprehensive Internet websites potentially cost prohibitive.

§1969(e)(2)(B). This subsection has been clarified to indicate that motor vehicle manufacturers would be required to provide information on their websites that allow users to access the information by at least one of the following four methods: 1) online viewing; 2) downloading to a personal computer's hard drive; 3) electronic mail; and 4) fax transmission.

§1969(e)(2)(E). This section has been modified to delete the requirement for a live contact person who can answer questions via telephone. Instead, motor vehicle manufacturers would be required to respond to all e-mail inquiries within 48 hours of receipt, Monday through Saturday.

§1969(e)(2)(G). The ARB would no longer require motor vehicle manufacturers to provide schedules for training classes on their Internet websites. Instead, all available training materials (i.e., books, manuals, diagrams, etc.) would be required to be available for purchase online.

§1969(e)(2)(K). All emission-related service information would be required to be provided on motor vehicle manufacturers' websites in accordance with the standardized nomenclature provided in the Society of Automotive Engineers (SAE) standard J1930. The use of the standard should reduce confusion with respect to emission-related terms and acronyms.

§1969(e)(2)(M). Motor vehicle manufacturers would be required to specify the minimum hardware and software specifications that would permit satisfactory access to their websites.

§1969(e)(4). The Executive Officer would be provided free, unrestricted access to motor vehicle manufacturer websites on the Internet for the purposes of ongoing monitoring of manufacturers' compliance.

§1969(e)(5). Motor vehicle manufacturers would be required to provide to the ARB annual reports regarding the performance of their websites. These reports would assist the ARB in determining if motor vehicle manufacturers are complying with the regulations.

§1969(f)(2). Beginning with the 2004 model year, motor vehicle manufacturers would be required to comply with SAE standard J1962 for all pass-through capabilities. This change is consistent with a similar provision in the U.S. EPA's proposed NPRM.

§1969(h). All service information would be required to be maintained by motor vehicle manufacturers on their Internet websites for at least 15 years. This amount of time should be adequate for the vast majority of vehicles in operation. After that time, the motor vehicle manufacturer would have discretion to leave the information on the website or maintain it on an off-line electronic format available for purchase. This change provides consistency with a similar provision in the U.S. EPA's proposed NPRM.

§1969(j). The requirement in paragraph (3)(D) for a motor vehicle manufacturer to petition the Superior Court in the county of the covered person's principal place of business has been replaced with a requirement for the petitioning party to file a declaratory relief petition in accordance with the venue provisions of the Code of Civil Procedure, section 395.

§1969(k). After review and consideration of the comments received from the California Automotive Task Force and automobile manufacturers, the ARB staff is proposing that former draft section 1969(i) be significantly revised. The staff believes that the proposed revisions better reflect the intent of section 43105.5(e) that enforcement discretion to issue a notice to comply against a motor vehicle manufacturer principally lies with the Executive Officer and should not be delegated to an administrative hearing officer. Nonetheless, recognizing the important role that administrative review provides in assuring fairness and proper consideration of a covered person's claims of noncompliance, staff is proposing that covered persons be afforded the opportunity to have any determination not to issue a notice to comply internally reviewed before becoming final. Under the revised procedures, initial review of a covered person's request to conduct an audit of a motor vehicle manufacturer's compliance and the determination to issue a notice to comply would be handled by the Chief of the Mobile Source Operations Division. A covered person dissatisfied with this first level determination would have the right to request Executive Officer review. In addition to Executive Officer review, a covered person could exercise its rights under California law to have any final determination reviewed by a California court under traditional mandamus pursuant to section 1085 of the Code of Civil Procedure.

Former section 1969(j), the procedures that apply after a notice to comply has been issued, has been incorporated into new section 1969(k).

§1969(l). This section has been revised to be consistent with the review procedures set forth in section 1969(k). For similar reasons, staff has rewritten the section to better reflect the Executive Officer's discretion in determining whether a noncomplying manufacturer's submitted compliance plan would bring that manufacturer into compliance within 45 days.

Staff has further revised the section to expressly provide that the Executive Officer would be required to request administrative hearing review of a determination to issue a notice to comply whenever a motor vehicle manufacturer has failed to request a review to contest the notice. The above changes are in accord with the plain meaning

of section 43105.5(e) and should ensure proper enforcement of the statute and regulations.

§1969(m). To provide improved clarity in assessing penalties, the staff has defined the term “single violation”.

Summary of Changes to Title 17, CCR Section 60060.1 et seq.

§60060.2. Many of the definitions have been removed from this section because they either already exist in Title 13 CCR 1969 or 17 CCR 60065.2, or they are no longer used in the proposed hearing procedures. The term “party” has been revised to refer to persons who appear before a hearing officer in reviewing an Executive Officer determination against a motor vehicle manufacturer.

§60060.8. Motion to Intervene. The staff is proposing that this section be added to formally allow a party having an interest in proceedings to intervene in the review process. It is anticipated that most often the intervenor would be the covered person who initially filed the request for audit against a motor vehicle manufacturer.

Former §60060.9. Records of the State Board. This section has been deleted as duplicative and unnecessary. All persons have a right to request disclosure of public records pursuant to Government Code section 6250 et seq. and Title 17, CCR section 91000 et seq.

§60060.11. Authority of Hearing Officers. Consistent with the changes made to Title 13 CCR sections 1969(k) and (l), this section has been revised to reflect the different types of review hearings that an administrative hearing officer may conduct.

§60060.15. Requests for Review by a Motor Vehicle Manufacturer. This section has been revised consistent with Title 13 CCR sections 1969(k) and (l) to reflect the rights of a motor vehicle manufacturer to request review of Executive Officer determinations to issue a notice to comply. Former paragraph (a)(2) has been deleted because under Health and Safety Code 43105.5(f), the burden to request a hearing to review an Executive Officer determination rejecting a compliance plan submitted by a motor vehicle manufacturer lies with the Executive Officer, not the motor vehicle manufacturer.

Former §60060.16. Requests for Review by a Covered Person. This section has been deleted consistent with Title 13 CCR sections 1969(k) and (l).

§60060.16. Requests for Review by the Executive Officer. This section has been added consistent with Title 13 CCR sections 1969(k) and (l).

§60060.17. Content of a Request for Review. The section was rewritten for purposes of clarification. Additionally, a requirement that the request for review include the name of address of any identified interested party has been added to ensure that the interested party is properly noticed and afforded the opportunity to intervene.

§60060.18. Notice of Receipt of Request for Review. This section has been revised for purposes of clarification and consistency with other procedural requirements.

Former §60060.19. The content of this section has been incorporated within §60060.18.

§60060.25. Discovery. A formal discovery section, including procedures for compelling discovery, has been added to provide the parties the opportunity to fully exchange necessary and relevant information.

§60060.28. Failure to Appear at Hearing. This section clarifies the hearing officer's authority to take appropriate action if a party fails to appear at a scheduled hearing.

§60060.29. Conduct of Hearings. This section has been added to clarify the rights and responsibilities of the parties and the hearing officer at hearings for review. The provisions assure that all parties are provided with due process and a full and fair hearing. Paragraph (c), however, makes clear that due process does not entitle a motor vehicle manufacturer to a hearing on the merits of an Executive Officer determination to issue a notice to comply when review has been requested by the Executive Officer for the purpose of issuing a compliance order.

§60060.31. Evidence by Declaration. This section has been added to allow the parties the flexibility of submitting oral testimony by use of declaration. This provision is consistent with other hearing procedures adopted by the ARB.

§60060.32. Decisions and Orders of the Hearing Officer. This section has been revised to clarify the responsibilities of the hearing officer and to make the provisions of the section consistent with other requirements of the hearing process.

§60060.34. Judicial Review. A new paragraph (b) has been added to make it clear that a motor vehicle manufacturer cannot request judicial review of the underlying merits of a notice to comply if it failed to contest the Executive Officer determination in the first instance.

Several other non-substantive modifications have been made throughout the regulation to correct grammatical and typographical errors, correct reference and citations, and to improve the clarity of the regulations.

Request for Comments:

Interested parties are encouraged to submit written comments concerning this mail-out. Such written comments should be received no later than Friday, August 3, 2001, and sent to Mr. Allen Lyons, Chief, New Vehicle/Engine Programs Branch, Air Resources Board, 9528 Telstar Avenue, El Monte, CA 91731.

If any party wishes its written comments submitted with respect to this mail-out to be treated as confidential by staff, it should be clearly marked as "confidential" and be on pages which are easily detachable from other non-confidential information. California guidelines (sections 91000-91022, Title 17, California Code of Regulations, and Health and Safety Code section 39660(e)) would be followed in the handling of confidential information. Affected parties should justify confidential treatment of any information not specifically mentioned in these guidelines.

Questions regarding this mail-out should be directed to Mr. Allen Lyons, Chief, New Vehicle/Engine Programs Branch, at (626) 575-6918, or Mr. Dean Hermano, Staff Engineer, at (626) 459-4487, or by e-mail at dhermano@arb.ca.gov.

Sincerely,

/s/

R. B. Summerfield, Chief
Mobile Source Operations Division

- Attachment 1: Proposed Regulatory Language for Requirements of SB1146, Title 13, CCR, Section 1969
- Attachment 2: Proposed Administrative Procedures for Review of Executive Officer Determinations, Title 17, CCR, Sections 60060.1 through 60060.34

Attachment 1

CALIFORNIA REGULATIONS FOR MOTOR VEHICLE SERVICE INFORMATION
FOR 1994 AND SUBSEQUENT MODEL YEAR VEHICLES

--DRAFT--
(July 19, 2001)

Proposed Regulation Order

Add Title 13, California Code of Regulations, Chapter 1 Motor Vehicle Pollution Control Devices, section 1969 to read as follows:

Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)

§1969 Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles

- (a) Applicability. Unless otherwise noted, ~~¶~~this section shall apply to all California-certified 1994 and subsequent model-year passenger cars, light-duty vehicles and medium-duty vehicles equipped with on-board diagnostic systems pursuant to Title 13, California Code of Regulations, sections 1968.1 and 1968.2.
- (b) Severability of Provisions. If any provision of this section or its application is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected.
- (~~bc~~) Definitions. The definitions in section 1900(b), Division 3, Chapter 9, Title 13 of the California Code of Regulations, apply with the following additions:
- (1) “Access codes, recognition codes and encryption” mean any type, strategy, or means of encoding software, information, devices, or equipment that would prevent the access to, use of, or proper function of any emission-related part.
 - (2) “Bi-directional control” means the capability of a diagnostic tool to send messages on the data bus (if applicable) that temporarily override a module’s control over a sensor or actuator and give control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.
 - (3) “Covered person” means any person or entity engaged in the business of service or repair of motor vehicles ~~in California who is licensed or registered with the Bureau of Automotive Repair to conduct that business,~~ or who is engaged in the manufacture or remanufacture of emission-related motor vehicle parts for those California motor vehicles.
 - (4) “Data stream information” means information that originates within the vehicle by a module or intelligent sensor (including, but not limited to, a sensor that contains and is controlled by its own module) and is transmitted between a network of modules and intelligent sensors connected in parallel with either one or two communications wires. The information is broadcast over communication wires for use by other modules such as chassis or transmission modules to conduct normal vehicle operation or for use by diagnostic tools. Data stream

- information does not include engine calibration-related information.
- (5) “Emission-related motor vehicle information” means information regarding any of the following:
 - (A) Any original equipment system, component, or part that controls emissions.
 - (B) Any original equipment system, component, or part associated with the powertrain system including, but not limited to, the fuel system and ignition system.
 - (C) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.
 - (6) “Emission-related motor vehicle part” means any direct replacement automotive part or any automotive part certified by Executive Order that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts and specialty parts.
 - (7) “Enhanced data stream information” means data stream information that is specific for an original equipment manufacturer’s brand of tools and equipment.
 - (8) “Enhanced diagnostic tool” means a diagnostic tool that is specific to the original equipment manufacturer’s vehicles.
 - (9) “Fair, reasonable, and nondiscriminatory price”, for the purposes of section 1969, means a price that allows manufacturers to recover the cost of providing required information and diagnostic tools considering the following:
 - (A) The net cost to the motor vehicle manufacturers’ franchised dealerships for similar information obtained from motor vehicle manufacturers, less any discounts, rebates or other incentive programs;
 - (B) The cost to the motor vehicle manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs may be included;
 - (C) The price charged by other motor vehicle manufacturers for similar information;
 - (D) The average cost of the information to a covered person.
 - ~~(DE)~~ The price charged by the motor vehicle manufacturer for similar information immediately prior to January 1, 2000;
 - (F) The ability of an average covered person to afford the information.
 - ~~(EG)~~ The means by which the information is distributed;
 - ~~(FH)~~ The extent the information is used, which included the number of users, and frequency, duration, and volume of use; and
 - ~~(GI)~~ Inflation.

The Executive Officer has the authority to request information related to a motor vehicle manufacturer's pricing methods in order to evaluate whether specified prices are fair and reasonable.

- (10) "Initialization" or "reinitialization" means the process of resetting or reprogramming a vehicle security system by means of an ignition key or access code(s).
 - (11) A "Reasonable business mean" ~~means~~ is a method or mode of distribution or delivery of information that is commonly used by businesses or government to distribute or deliver and receive information at a fair, reasonable, and nondiscriminatory price. A reasonable business mean includes, but is not limited to, the Internet, first-class mail, courier services, and fax services.
- (e~~d~~) (1) Service Information: Motor vehicle manufacturers shall make available for purchase to all covered persons all emission-related diagnosis and repair information for subject vehicle models that is provided to the motor vehicle manufacturer's franchised dealerships. The information would be required to include, but is not limited to, service and repair procedures, technical service bulletins, and training materials.
- (2) On-Board Diagnostic System (OBD II) Information. Motor vehicle manufacturers shall make available for purchase to all covered persons, a general description of each OBD II system used in their 1996 and subsequent model-year vehicles, which shall include the following:
 - (A) A general description of the operation of the monitor, including a description of the parameter that is being monitored.
 - (B) A listing of all typical OBD II diagnostic trouble codes associated with each monitor.
 - (C) A description of the typical enabling conditions for each monitor to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range and time after engine startup.
 - (D) A listing of each monitor sequence, execution frequency and typical duration.
 - (E) A listing of typical malfunction thresholds for each monitor.
 - (F) For OBD II parameters for specific vehicles that deviate from the typical parameters, the OBD II description shall indicate the deviation and provide a separate listing of the typical values for those vehicles.
 - (G) Identification and scaling information necessary to interpret and understand data available to a generic scan tool through "mode 6," pursuant to SAE J1979, incorporated by reference into section 1968.1.
 - (H) The information required by this subsection shall not include specific algorithms, specific software code or specific calibration

data beyond that required to be made available through the generic scan tool pursuant to section 1968.1, except where such algorithms, codes or data are made available to franchised dealerships.

- ~~(3)~~ ~~Manufacturers shall make available to covered persons for vehicle models meeting the requirements of subsection (e)(2) all vehicle reprogramming information and materials necessary to install manufacturers' software and calibration data.~~
- ~~(4)~~ 3 On-Board Computer Initialization Procedures: Motor vehicle manufacturers shall provide to all covered persons information regarding initialization procedures, including access codes, if such procedures are necessary for the proper installation of ~~vehicle~~ new on-board computers installed on vehicles. However, motor vehicle manufacturers are not required to provide initialization procedure information that permits the circumvention of a vehicle's security system(s).
- ~~(5)~~ 4 The information in this subsection shall be made available for purchase no later than 90 days after the effective date of these regulations or January 1, 2003, whichever is later, for vehicle models produced introduced into commerce on or before the effective these dates. For all new vehicle models for which production commences after ~~the effective~~ the above dates of these regulations, motor vehicle manufacturers ~~must~~ shall make available for purchase the required information no later than 90 days after the start of vehicle production introduction into commerce or concurrently with its availability to franchised dealerships, whichever occurs first.
- ~~(e)~~ (de) (1) All ~~information~~ information required to be made available for purchase under subsection ~~(e d)~~ shall be accessible via the Internet, except that motor vehicle manufacturers with annual California sales of less than 300 vehicles (based on the average number of California-certified vehicles sold by the motor vehicle manufacturer in the three previous consecutive model years) have the option not to provide required materials directly over the Internet. Such manufacturers may instead submit an alternative method for providing the information required by this section to the Executive Officer for review and approval. The alternate method shall include an Internet website that adequately specifies that the required service information is readily available through other reasonable business means at fair, reasonable, and nondiscriminatory costs.
- ~~(2)~~ (2) ~~Notwithstanding the provisions of this subsection, motor vehicle manufacturers must also offer for sale the information required by this section in an off-line electronic format(s), including CD-ROM, that can be read using a personal computer and commonly available software.~~
- ~~(3)~~ (2) For purposes of making the information available for purchase via the

Internet, motor vehicle manufacturers, or their designees, shall establish and maintain an Internet website(s) that:

- (A) Is accessible at all times, except during times required for routine and emergency maintenance. Routine maintenance shall be scheduled after normal business hours.
- (B) Houses all of the required information such that it is available for downloading direct access, which includes at least one of the following methods: 1) online viewing; 2) downloading to a local computer; 3) electronic mail; and 4) fax transmission, except as provided in subsection (d e)(3 2)(L J).
- (C) Is written in English with all text using readable font sizes.
- (D) Has clearly labeled and descriptive headings or sections, has an online index connected to a search engine and/or hyperlinks that directly take the user to the information, and has a comprehensive search engine that permits ~~covered persons~~ users to obtain information by various query terms including, but not limited to, vehicle model, model year, ~~vehicle identification number~~, part number, bulletin number, diagnostic procedure, and trouble code.
- (~~F E~~) ~~Identifies a contact person(s) who is familiar with the information available at the site and operation of the site itself and p~~ Provides, at a minimum, e-mail access and a phone number(s) for direct communication with the a designated contact person(s). A The contact person(s) shall be available during all normal business hours in California, and shall respond to any inquiries within 24 48 hours of receipt, Monday through Saturday. The website shall also provide a business address for the purposes of receiving mail, including overnight or certified mail.
- (~~G F~~) Lists the most recent updates to the website. Updates must occur concurrently with their availability of new or revised information to franchised dealerships.
- (~~H G~~) Provides schedules for training classes (if any) materials offered by the motor vehicle manufacturer, and instructions f Or obtaining any training materials that are not in a format that can be readily downloaded directly from the Internet, the website must include information on the type of materials that are available, and how such materials can be purchased.
- (~~I H~~) Offers media files (if any) and other documents in formats that can be viewed with commonly available software programs (e.g., Adobe Acrobat, Microsoft Word, etc.).
- (~~J I~~) Provides secure Internet connections (i.e., certificate-based) for transfer of payment and personal information.
- (~~K~~) ~~Provides hyperlinks to any related information or websites.~~
- (~~L J~~) Provides ordering information and instructions for the purchase of manufacturer emission-related enhanced diagnostic tools and reprogramming information pursuant to subsection (e f).

- (K) Complies with the Society of Automotive Engineers (SAE) standard J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms," for all emission-related information.
- (M L) Complies with the following website performance criteria:
 - (i) Possesses sufficient server capacity to allow ready access by all ~~covered persons~~ users and ~~have~~ has sufficient downloading capacity to assure that all ~~covered persons~~ users may obtain needed information without undue delay.
 - (ii) Broken weblinks shall be corrected or deleted weekly.
 - (iii) Website Navigation does not require a user to returning to the motor vehicle manufacturer's home page or a search engine in order to access a different portion of the site. The use of "one-up" links (i.e., links that connect to related webpages that preceded the one being viewed) is recommended at the bottom of subordinate webpages in order to allow a user to stay within the desired subject matter.
- (M) Indicates the minimum hardware and software specifications required for satisfactory access to the website(s).
- (4)(3) Motor vehicle manufacturers must implement fair, reasonable, and nondiscriminatory pricing structures that take into account different periods of time for online access and/or the number of online requests or searches, as well as requests for information for particular technical service bulletins, particular manuals or other requests of a limited scope. These pricing structures shall be submitted to the Executive Officer for review concurrently with being posted on the motor vehicle manufacturer's service information website(s) and submitted to the Executive Officer for review.
- (4) Motor vehicle manufacturers must provide the Executive Officer with free, unrestricted access to their Internet websites.
- (5) Reporting Requirements. Motor vehicle manufacturers shall provide the Executive Officer with reports that describe the performance of their individual Internet websites. Motor vehicle manufacturers shall submit such reports annually by December 31st. The Executive Officer may also require manufacturers to submit additional reports upon request. The reports shall include any information required by the United States Environmental Protection Agency. These reports shall be submitted to the Executive Officer in the format prescribed by the Executive Officer.
- (ef) Diagnostic and Reprogramming Equipment and Information.
 - (1) Motor vehicle manufacturers shall make available for purchase the following diagnostic tools and information:
 - (A) To all covered persons, all emissions-related enhanced diagnostic

- tools, including software and data files used in such equipment.
- (B) To all equipment and tool companies, all information necessary to ~~design and manufacture tools capable of reading and formatting~~ all emission-related data stream information, including enhanced data stream information, available when using diagnostic tools supplied to franchised dealerships, and to activate all emission-related bi-directional controls that can be activated by franchised dealership tools.
- (2) Beginning with the 2004 model year, motor vehicle manufacturers' reprogramming methods shall be compatible with SAE J2534 Draft Paper, "Recommended Practice for Microsoft Windows 32-Bit Application Programming Interface for Pass-Through Vehicle Reprogramming" for all vehicle models that can be reprogrammed by licensed dealerships. Motor vehicle manufacturers must also comply with SAE standard J1962, "Diagnostic Connector," for all pass-through reprogramming capabilities.
- (3) Manufacturers shall make available for purchase to covered persons for vehicle models meeting the requirements of subsection (f)(2) all vehicle reprogramming information and materials necessary to install manufacturers' software and calibration data.
- (3 4) The information in this subsection shall be made available for purchase no later than 90 days after the effective date of these regulations or January 1, 2003, whichever is later, for vehicle models produced introduced into commerce on or before the effective these dates. For all new vehicle models for which production commences after ~~the effective the above~~ dates of these regulations, motor vehicle manufacturers ~~must~~ shall make available for purchase the required information no later than 90 days after the start of vehicle ~~production~~ introduction into commerce or concurrently with its availability to franchised dealerships, whichever occurs first.
- (f g) Costs: All information and diagnostic tools required to be provided to covered persons by these regulations shall be made available for purchase at a fair, reasonable, and nondiscriminatory price.
- (h) Maintenance of Information: All information required by these regulations must be maintained by the motor vehicle manufacturer for a period of fifteen years. After such time, the information may be retained in an off-line electronic format (e.g., CD-ROM) provided it is available for purchase upon request.
- (g i) ~~Access Codes:~~ Motor vehicle manufacturers shall not utilize any access code, recognition code or encryption for the purpose of preventing a vehicle owner from using an emission-related part (with the exception of the powertrain control module, engine control modules and transmission control

modules), that has not been manufactured by that motor vehicle manufacturer or any of its original equipment suppliers.

- (h j) Trade Secrets: Manufacturers may withhold trade secret information which otherwise must be made available for purchase, subject to the following:
- (1) At the time of initial posting of all information required to be provided under sections (e d) through (e f) above, the motor vehicle manufacturer shall identify, by brief description, any information that it believes to be a trade secret and not subject to disclosure.
 - (2) A covered person, believing that a manufacturer has not fully provided all information that is required to be provided under subsections (e d) through (e f) above or that such information is needed to offset anticompetitive effects, shall submit a request in writing by certified mail to the motor vehicle manufacturer for release of the information.
 - (3) Upon receipt of the request for information:
 - (A) If the information has not been previously made available for purchase because of an oversight on the part of the motor vehicle manufacturer, the motor vehicle manufacturer shall within ~~3 days~~ 48 hours make the information available for purchase directly to the requesting covered person at reasonable cost and by reasonable business means. Additionally, the motor vehicle manufacturer shall, within 7 days, make such information available for purchase on the Internet such information pursuant to subsections (e d) through (e f).
 - (B) If the motor vehicle manufacturer has not made the requested information available for purchase because it believes it to be a trade secret, the motor vehicle manufacturer shall within 14 days, notify the requesting covered ~~party~~ person that it considers the information to be a trade secret, provide justification in support of its position, and make reasonable efforts to see if the matter can be resolved informally.
 - (C) If the parties can informally resolve the matter, the motor vehicle manufacturer shall immediately provide the requesting covered person with all of the information that is subject to disclosure consistent with that agreement. The motor vehicle manufacturer shall also, within 7 days, make such information available for purchase on its Internet site(s) and by such other reasonable business means that the motor vehicle manufacturer has been using to distribute information pursuant to this section.
 - (D) If the matter cannot be informally resolved, the motor vehicle manufacturer shall, within 21 days from the date that it initially received the request for information, petition the California superior court for declaratory relief, in the county of the covered person's principal place of business, to make a finding as to the information being a trade secret that is exempt from disclosure.

The petition shall be filed in accordance with Code of Civil Procedure 395 et seq. The petition shall be accompanied with a declaration stating facts that show that it has made a reasonable and good faith attempt to informally resolve the matter.

~~(E) The parties shall comply with the order of the superior court.~~

(i k) Executive Officer Review of Compliance

~~(1) Order to Show Cause.~~

~~(A) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.~~

~~(B) It shall periodically conduct surveys of the motor vehicle manufacturer Internet sites and other distribution sources to determine whether the information requirements of Health and Safety Code section 43105.5 and this regulation are being fulfilled. Among other things, in conducting such surveys, the Executive Officer will consider any complaints or charges of noncompliance that have been filed with the Executive Officer by covered persons.~~

~~(C) If after such review, the Executive Officer determines that a motor vehicle manufacturer is not in compliance, the Executive Officer shall issue to the motor vehicle manufacturer an order to show cause why a notice to comply should not be issued. The order to show cause shall set forth the Executive Officer's finding supporting its contentions that the motor vehicle manufacturer is not in compliance.~~

~~(D) Upon receipt of an order to show cause, the motor vehicle manufacturer shall have 15 days to respond, by written declaration, to the contentions and findings set forth in the order to show cause.~~

~~(E) In conducting its review, the Executive Officer may request that the motor vehicle manufacturer or any other person provide such information that he or she deems necessary.~~

~~(F) After due consideration of all of the evidence, the Executive Officer shall determine whether the motor vehicle manufacturer is in compliance. If the Executive Officer determines that the motor vehicle manufacturer is not in compliance, he or she shall issue to the motor vehicle manufacturer a notice to comply.~~

~~(2) Request for Review by a Covered Person~~

~~(A) A covered person may request that the Executive Officer review whether the motor vehicle manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and this regulation.~~

~~(B) The covered person shall concurrently serve a copy of the request for review on the motor vehicle manufacturer at the time~~

- that it files the request with the Executive Officer.
- (C) ~~The request to the Executive Officer shall be in the form of a written declaration setting forth specific allegations and supporting evidence demonstrating that the motor vehicle manufacturer is not in compliance.~~
 - (D) ~~Within 15 days of being served with the request for review, the motor vehicle manufacturer may respond to the Executive Officer regarding the allegations and evidence raised in the covered person's request and may assert any defenses that it deems appropriate. The response shall be by written declaration and shall be concurrently served on the covered person.~~
 - (E) ~~The Executive Officer, or his designated representative, shall within 30 days of receipt of the request for review, commence an investigation into the issues that have been raised in the request for review and the motor vehicle manufacturer's response, if any. The Executive Officer may request or subpoena the parties to provide any additional evidence, either in writing or at a hearing convened by the Executive Officer, as deemed necessary. The Executive Officer shall make a determination on the merits of the request for review within 60 days after its receipt. The Executive Officer may for good cause extend the time for issuing the determination.~~
 - (F) ~~If the Executive Officer determines that the motor vehicle manufacturer has failed to comply with any of the requirements of this section, the Executive Officer shall issue, in writing, a notice to comply to the motor vehicle manufacturer.~~
- (1) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.
 - (2) The Executive Officer, through the Chief of the Mobile Source Operations Division (Division Chief), shall periodically audit a motor vehicle manufacturer's internet website(s) and other distribution sources to determine whether the information requirements of Health and Safety Code section 43105.5 and this regulation are being fulfilled. Motor vehicle manufacturers must provide the Executive Officer with free unrestricted access to the sites and other sources for the purposes of an audit.
 - (3) The Division Chief shall also commence an audit upon receipt of a request from a covered person that provides reasonable cause to believe that a motor vehicle manufacturer is not in compliance.
 - (A) Such a request shall be in the form of a written declaration setting forth specific details of the alleged noncompliance of the motor vehicle manufacturer. The declaration shall also set forth facts that demonstrate that the requesting covered person has undertaken efforts to resolve the matter informally with the named

- motor vehicle manufacturer.
- (B) The covered person shall concurrently serve a copy of the audit request on the motor vehicle manufacturer against whom the request has been filed.
 - (C) The Division Chief shall determine if the request, on its face, sets forth facts establishing reasonable cause to believe that that motor vehicle manufacturer is in noncompliance with Health and Safety Code section 43105.5 or these regulations and that the covered person has undertaken reasonable efforts to informally resolve the alleged noncompliance with the manufacturer directly. If the Division Chief determines that the request satisfies these conditions, he or she shall conduct an audit of the designated motor vehicle manufacturer's site. Otherwise, the Division Chief shall dismiss the request and notify the requesting covered person and the affected motor vehicle manufacturer of his or her determination.
- (4) In conducting any audit, the Division Chief may require the motor vehicle manufacturer to provide the ARB with all information and materials related to compliance with the requirements of Health and Safety Code section 43105.5 and this regulation, including but not limited to:
- (A) Copies of all books, records, correspondence or documents in its possession or under its control that the manufacturer is required to provide persons engaged in the service and repair industries and to equipment and tool companies under paragraphs (c) and (e) of this regulation, and
 - (B) Any and all reports or records developed or compiled either for or by the manufacturer to monitor performance of its Internet site(s).
- (5) In conducting the audit, the Division Chief may order or subpoena the motor vehicle manufacturer, the party filing the request for inspection, or any other person with possible knowledge of the issue of noncompliance to appear in person at a hearing and testify under oath. The Division Chief may also request or subpoena such persons to provide any additional information that the Division Chief deems necessary to determine any issue of noncompliance.
- (6) Except for good cause, the audit shall be completed within 60 days from the date that the Division Chief notifies the motor vehicle manufacturer about the audit. At the conclusion of the audit, the Division Chief shall issue a written determination, with supporting findings, regarding compliance by the motor vehicle manufacturer. If the Division Chief finds sufficient credible evidence that the motor vehicle manufacturer is not in compliance with any requirements of Health and Safety Code section 43105.5 or this regulation, the determination shall be in the form of a notice to comply against the motor vehicle manufacturer.

- (7) The Division Chief's determination not to issue a notice to comply against a motor vehicle is subject to limited review by the Executive Officer.
- (A) A covered person may only request that the Executive Officer review a determination that it specifically requested pursuant to paragraph (3) above.
- (B) The covered person shall file the request for Executive Officer review within 10 days from the date of issuance of the Division Chief's determination.
- (i) The request shall be filed to the attention of the Executive Officer c/o Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812-2815. A copy of the request shall be concurrently served on the motor vehicle manufacturer that was the subject of the audit and determination.
- (ii) The request shall set forth specific facts and reasons why the determination should be reviewed and supporting legal authority for why a notice to comply should have been issued.
- (C) The motor vehicle manufacturer may file an opposition to the request for review within 10 days from the date of service of the request for review.
- (D) The Executive Officer shall issue a determination within 30 days from the last day that the motor vehicle manufacturer had to file an opposition. The Executive Officer may affirm the decision of the Division Chief; remand the matter back to the Division Chief for further consideration or evidence; or issue a notice to comply against the manufacturer.
- (8) Within 30 days from the date of issuance of a notice to comply, the motor vehicle manufacturer shall either:
- (A) Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer will come into compliance with this section within 45 days from the date of submission of the plan, or such longer period that the Executive Officer deems appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance; or
- (B) Request an administrative hearing to consider the basis or scope of the notice to comply.
- (9) If the motor vehicle manufacturer elects to submit a compliance plan, the Executive Officer shall review the plan and issue a written determination, within 30 days, either accepting or rejecting the plan. The Executive Officer shall reject the compliance plan if the Executive Officer finds that it will not bring the motor vehicle manufacturer into compliance within 45 days from the date that the plan would have been approved.

- (j) ~~Notice to Comply.~~
 - (1) ~~Within 30 days from the date of issuance of the notice to comply, the motor vehicle manufacturer shall either:~~
 - (A) ~~Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer will come into compliance with this section within 45 days from the date of submission of the plan, or such longer period that the Executive Officer deems appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance; or~~
 - (B) ~~Request an administrative hearing to consider the basis or scope of the notice to comply.~~
 - (2) ~~If the motor vehicle manufacturer elects to submit a compliance plan, the Executive Officer shall review the plan and issue a written determination, within 30 days, either accepting or rejecting the plan. The plan shall be rejected if it will not bring the motor vehicle manufacturer into compliance within 45 days from the date of the plan's submission. The written determination shall set forth findings supporting the conclusions that are reached.~~

- (k) ~~Administrative Hearing Review.~~
 - (1) ~~A motor vehicle manufacturer may request that an administrative hearing officer review:~~
 - (A) ~~The basis and scope of an Executive Officer's order to comply.~~
 - (B) ~~The Executive Officer's rejection of a compliance plan submitted in response to an issued order to comply.~~
 - (2) ~~A covered person may request that an administrative hearing officer review:~~
 - (A) ~~An Executive Officer's determination following a review conducted pursuant to a request filed under subsection (i)(2), that a motor vehicle manufacturer has not failed to comply with either Health and Safety Code section 43105.5 or this regulation.~~
 - (B) ~~The Executive Officer's acceptance of a compliance plan submitted by a motor vehicle manufacturer in response to an issued order to comply.~~

- (1) A motor vehicle manufacturer may request that a hearing officer review the basis and scope of the notice to comply. Failure by the manufacturer to request such a review and failing, in the alternative, to submit a compliance plan as required by paragraph (k)(8)(A) shall result in the Executive Officer's determination becoming final and may subject the manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and paragraph (m).
- (2) The Executive Officer shall forward the following matters to a hearing officer for appropriate administrative review, including, if warranted,

consideration of penalties:

(A) A compliance plan that it has rejected pursuant to paragraph (k)(9).

(B) A notice to comply that has been issued against a manufacturer who has failed to either request administrative review of the Executive Officer determination, or, in the alternative, submit a compliance plan.

(3) Administrative hearings under this regulation shall be conducted pursuant to the procedures set forth in Title 17, California Code of Regulations, section 60060 et seq.

~~(l m) Penalties. If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer fails to correct the violation within 30 days from the date of his finding, the hearing officer may impose a civil penalty upon the motor vehicle manufacturer in an amount not to exceed \$25,000 per day per violation until the violation is corrected. Further, the hearing officer may order the Executive Officer to suspend approval of the motor vehicle manufacturers' pending certification applications until compliance is achieved.~~

(1) If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer fails to correct the violation within 30 days from the date of his finding, the hearing officer may impose a civil penalty upon the motor vehicle manufacturer in an amount not to exceed \$25,000 per day per violation until the violation is corrected.

(2) For purposes of this section, a finding by a hearing officer that a motor vehicle 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.

NOTE: Authority cited: sections 39600, 39601, 43104 and 43105.5, Health and Safety Code. Reference: section 39027.3, 43104 and 43105.5, Health and Safety Code.

Attachment 2

CALIFORNIA REGULATIONS FOR ADMINISTRATIVE
PROCEDURES FOR REVIEW OF EXECUTIVE OFFICER
DETERMINATIONS REGARDING SERVICE INFORMATION
FOR 1994 AND SUBSEQUENT MODEL YEAR VEHICLES

--DRAFT--
(July 19, 2001)

Add Title 17, California Code of Regulations, Chapter 1, Subchapter 1.25, to read as follows:

Article 2.5. Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles.

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

§ 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(b 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) "Administrative record" means all documents and records timely filed with the hearing office, pursuant to section 60060.4 and the time deadlines of these rules, including pleadings, petitions, motions, and legal arguments in support thereof; all documents or records admitted into evidence or administratively noticed by the hearing officer; all official recordings or written transcripts of hearings conducted; and all orders or decisions issued by the hearing officer regarding the matters at issue; administrative record does not include any prohibited communications as defined in section 60060.14. and any settlement discussions or offers of settlement conducted between the parties.~~

~~(2) "Days" means calendar days.~~

~~(3) "Discovery" refers to the process set forth in section 60060.28 allowing one party to request and obtain information relevant to the complaint proceedings. The scope of discovery is limited by the express terms of that section.~~

(4) 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(i k).

~~(5) "Ex Parte Communication" means an oral or written communication not on the public record for which reasonable prior notice to all parties should have been given.~~

~~(6) "Hearing Office" refers to the administrative hearing office established by the state board to conduct administrative hearings to implement the provisions of these rules or to the Office of Administrative Hearings established pursuant to Government Code section 11370.2. The administrative hearing office of the state board shall include at least one administrative law judge who shall act as a hearing officer.~~

~~(7) "Hearing Officer" is an administrative law judge appointed by the state board to conduct hearings under these procedures.~~

(8) 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.

(A) ~~In a request for hearing filed by a covered person, the motor vehicle manufacturer that is the subject of alleged noncompliance.~~

(B) ~~In a request for hearing filed by a motor vehicle manufacturer or by the Executive Officer, the covered person who filed the underlying request for investigation~~

(9) 3 "Party" refers to those persons that appear before the hearing officer in an administrative review proceeding and typically include the Executive Officer; a motor vehicle manufacturer who contests an Executive Officer's determination to issue a notice to comply or reject a compliance plan submitted by a manufacturer pursuant to Health and Safety Code section 43105.5(e); covered persons, as that term is defined in Health and Safety Code section 39027.3(b), who have requested that the Executive Officer conduct an investigation pursuant to Title 13, CCR section 1969(j)(1)(B) and who contest an Executive Officer determination to not issue a notice to comply against a motor vehicle manufacturer. the Executive Officer or motor vehicle manufacturer appearing before a hearing officer in a hearing to review an Executive Officer determination against the motor vehicle manufacturer for noncompliance with Health and Safety Code section 43105.5 and Title 13, California Code of Regulations section 1969 and also to an intervening party.

(10) ~~"Proceeding" means any hearing, determination or other activity before the hearing officer involving the parties to a complaint.~~

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

(42 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.

~~(13) "Settlement Agreement" means a written agreement executed by the parties to the hearing that settles the issues raised in the request for review.~~

NOTE: Authority cited: Sections 39010, 39600, 39601, 43028, and 43031(a), et seq., Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Part 5, (commencing with 39010) and Sections, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 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 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Sections 11182 and 11184, Government Code; Sections 1013 and 1013a, Code of Civil Procedure; Section 1969, Title 13, California Code of Regulations.

§ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 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, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 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) If the motion filed under paragraph (b) is 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 60060.89. 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, further limited by the hearing officer, 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

~~§ 60060.9. Records of the State Board.~~

~~Except where public disclosure of information or exhibits is restricted by law, records of the state board are public records and are available to the public pursuant to section 91000, et seq., Title 17, California Code of Regulations.~~

~~NOTE: Authority cited: Sections 39600, 39601, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Sections 6250, et seq., Government Code; Sections 91000, et seq., Title 17, California Code of Regulations; Section 1969, Title 13, California Code of Regulations.~~

§ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Sections 11435.25, 11435.30 and 11435.55, Government Code; Section 751, Evidence Code; Section 1969, Title 13, California Code of Regulations.

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(f) and Title 13, CCR section 1969(l). Such authority shall include those matters in which:

(1) A motor vehicle manufacturer has contested a notice to comply that has been issued by the Executive Officer because the motor vehicle manufacturer has allegedly failed to comply with the provisions of section 43105.5 and the regulations adopted thereto;

(2) The Executive Officer has requested review and issuance of a compliance order against a motor vehicle 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

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

~~(3) A covered party has challenged an Executive Officer's determination to not issue a notice to comply against a motor vehicle manufacturer for failing to comply with Health and Safety Code section 43105.5 or the implementing regulations (See Title 13, CCR section (i)(5)).~~

(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: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.

§ 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 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Sections 11425.40 and 11512, Government Code; Section 1969, Title 13, California Code of Regulations.

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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Sections 11430.70 - 11430.80, Government Code; Section 1969, Title 13, California Code of Regulations.

§ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Sections 11340.1 - 11340.5, Government Code; Section 1969, Title 13, California Code of Regulations.

~~Subarticle 4. Initiating Review by the Executive Officer~~ Filing Requests for Administrative Hearing Review

§ 60060.15. Requests for Review by a Motor Vehicle Manufacturer.

~~(a) A motor vehicle manufacturer may file a request that a hearing officer review:~~

~~(1) An Executive Officer decision to issue a notice to comply to the motor vehicle manufacturer, pursuant to Health and Safety Code section 43105.5(e), for failing to comply with any of the requirements of section 43105.5 or the regulations of the ARB implementing that section.~~

~~(2) An Executive Officer determination rejecting a compliance plan submitted by the motor vehicle manufacturer in response to a notice to comply issued pursuant to Health and Safety Code section 43105.5.~~

~~(b) The motor vehicle manufacturer shall file the request for hearing within 30 days of receipt of the notice to comply, if challenging the notice, itself, or within 30 days of being notified by the Executive Officer that the submitted compliance plan has been rejected. The hearing officer may, for good cause, extend the time for such filing. A failure to file a timely request for hearing shall result in the Executive Officer action becoming final and may subject the motor vehicle manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f).~~

(a) A motor vehicle 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, pursuant to Health and Safety Code section 43105.5(e) and Title 13, CCR section 1969(j).

(b) The motor vehicle 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(k), 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(m).

NOTE: Authority cited: Sections 39600 and 39601, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

~~§ 60060.16. Requests for Review by a Covered Person~~

~~(a) If a covered person has requested that the Executive Officer review the compliance of a motor vehicle manufacturer pursuant to the procedures at Title 13, CCR section 1969 (i)(2) and the Executive Officer finds that the motor vehicle manufacturer is in compliance with the provisions of Health and Safety Code section 43105.5 and Title 13, CCR section 1969, a covered person may, within 30 days of service of that determination, request that the determination be reviewed by a hearing officer.~~

~~(b) If the Executive Officer determines that the motor vehicle manufacturer does not comply with either the statute or regulations and issues a notice to comply to the motor vehicle manufacturer and if the Executive Officer subsequently accepts the motor~~

~~vehicle manufacturer's submitted compliance plan, a covered person may, within 30 days of being notified of the Executive Officer's acceptance of the plan, request that the acceptance of the plan be reviewed by a hearing officer.~~

~~(c) The hearing officer may, for good cause, extend the time for filing a request for hearing.~~

~~(d) A failure to file a timely request for hearing shall result in the Executive Officer action becoming final.~~

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

§ 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(k)(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 with the Executive Officer.

(2) A motor vehicle manufacturer has submitted a compliance plan pursuant to Title 13, CCR section 1969(k)(8), and the Executive Officer has determined pursuant to the procedures set forth in section 1969(k)(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.

(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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 60060.17. Content of a Request for Review.

~~(a) A party filing 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.~~

~~(b) A request for review shall be signed by the requesting party or its designated representative.~~

~~(c) A request for review shall include copies of and specifically refer to the respective determination of the Executive Officer that is the subject of the request for review (i.e. the determination that the motor vehicle manufacturer is in compliance with Health and Safety Code section 43105.5, the notice to comply issued to the motor vehicle manufacturer, or the determination regarding the motor vehicle manufacturer's compliance plan).~~

~~(d) A request for review shall also contain:~~

~~(1) The correct business address of the requesting party and, if applicable, the name and address of the party's designated representative.~~

~~(2) 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.~~

~~(3) A statement of the proposed relief sought by the requesting party.~~

~~All statements shall be in the form of a declaration signed under penalty of perjury.~~

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 the determination rejecting the motor vehicle 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.

(e) 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 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 ~~30 days from the date that the requesting party received the document that is the subject of review~~, whichever is later, the underlying Executive Officer determination will become final.

(c) If the hearing office finds the request for hearing to be complete:

~~(1) It shall deem the request filed on the date that the request was received.~~

~~(2) The hearing office and shall notify the requesting party, the Executive Officer, and, the any identified interested party that a request for hearing has been filed.~~

(d) Except as provided in paragraph (f) below,

~~(3) The notice shall inform the parties that:~~

(1) Copies of these hearing procedures are available 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 its choosing and the right to an interpreter or other necessary accommodation.

~~(A) — A hearing will be conducted by a review of the evidentiary record that was considered by the Executive Officer in issuing his or her determination that is~~

~~under review, and set forth a schedule for the parties to submit responsive and reply argument to the hearing office.~~

~~(B (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 evidentiary record that it amassed Executive Officer determination that is the subject of the request for review and the investigative record that was compiled during it's the Executive Officer's investigation of the matters considered in making the determination that is under review.~~

~~(B) The Executive Officer and the interested party shall, within 30 days from the date of service of the notice, file a written response to the issues raised in the request for hearing. The response should include rebuttal to the arguments raised by the requesting party and specifically refer to the record that was before the Executive Officer that supports such rebuttal. The response should be in the form of a declaration signed under penalty of perjury.~~

~~(C) The requesting party may submit a reply within 15 days of receipt of any response submitted by the Executive Officer or interested party. The reply shall also be in the form of a declaration signed under penalty of perjury.~~

~~(D) The hearing record shall close on the last date in which the requesting party's reply could be received, which in no event shall be earlier than 30 days after the date that the hearing officer served the notice of filing on the parties.~~

~~(E) The parties have the right to request a hearing, in person, before the hearing officer but that such hearings shall only be granted when it is determined by the hearing officer that oral testimony is necessary to establish a complete record and assure a full and fair hearing.~~

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

(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 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, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Part 5, Health and Safety Code; Sections 60075.1, et seq., Title 17, California Code of Regulations; Section 1969, Title 13, California Code of Regulations.

§ 60060.19. Forwarding of the Evidentiary Record.

~~Within 15 days from the date of being served with the notice of filing, the Executive Officer shall forward to the hearing officer, a certified copy of the evidentiary record that it amassed during its investigation of the matters underlying the determination that is under review.~~

~~NOTE: Authority cited: Sections 39600 and 39601, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.~~

§ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 60060.201. Reply by Requesting Party.

~~Within 15 days of receipt of the last submitted response to the request for review filed by the Executive Officer and the interested party, the requesting party requesting review, or the Executive Officer in the forwarding of a rejected compliance plan, may file a reply responding to the contentions of the other parties 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, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.~~

§ 60060.212. 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 60020 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

~~§ 60060.23. Issues for Hearing.~~

~~The issues for hearing shall be limited to those raised in the request for hearing or the responses filed by the other parties.~~

~~Note: Authority cited: Sections 39600, 39601, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.~~

§ 60060.224. Stays Pending Issuance of Hearing Officer's Decision.

Pending the hearing officer issuing its decision, a motor vehicle 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

Subarticle 5. Preliminary Procedures

§ 60060.235. Schedule of Review Proceedings.

(a) Upon receipt of the 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 ~~whenever possible~~ 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: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.

§ 60060.246. 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 60060.257. 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) In general, the parties may not engage in any form of discovery in preparing for the review proceeding. Additionally, the parties may not use subpoenas as a means of discovery. In reviewing an Executive Officer's determination, the hearing officer shall limit, whenever possible, his or her consideration to the factual evidence that was before the Executive Officer at the time of his or her determination that is the subject of review.~~

~~(c) 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 investigation into the matter of the motor vehicle manufacturer's compliance with Health and Safety Code section 43105.5 and the regulations of the ARB. 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.~~

(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, 43104, 43105.5(e) and (f). Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.

Subarticle 6. Contempt and Sanctions

§ 60060.268. 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 ~~the contempt proceedings are held for contempt proceedings~~ pursuant to Government Code section 11455.20.

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

§ 60060.279. 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: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.

Subarticle 7. Hearings 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: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.

§ 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 to reject a motor vehicle manufacturer's 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 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 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 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: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.

~~§ 60060.30. Conduct of Review Proceedings.~~

~~(a) The review shall be presided over by a hearing officer who shall conduct a fair and impartial review in which each party has a reasonable opportunity to be heard.~~

~~(b) Unless otherwise ordered by the hearing officer, the review shall be limited to the review of evidence initially considered by the executive officer in making his or her determination that is under review and the written arguments submitted by the parties.~~

~~(c) The review shall be conducted in the English language.~~

~~(d) The hearing officer shall decide the matters before him based upon a preponderance of the evidence.~~

~~NOTE: Authority cited: Sections 39600, 39601, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.~~

~~§ 60060.310. Evidence.~~

~~(a) Unless otherwise ordered by the hearing officer, the evidence that the hearing officer will consider in reaching his or her decision will be the evidence the parties presented to the Executive Officer for consideration of the underlying determination that is the subject of the hearing officer's review.~~

~~(b) If upon motion of a party or the hearing officer's own motion, the hearing officer orders that oral testimony may be taken, such testimony shall be taken only under oath or affirmation.~~

~~(c) The review need not be conducted 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.~~

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

~~(e) 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.~~

~~(f) 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, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Sections 451 and 452, Evidence Code; Section 1969, Title 13, California Code of Regulations.~~

(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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Sections 451 and 452, Evidence Code; Section 1969, Title 13, California Code of Regulations.

§ 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]."

Subarticle 8. Decisions of the Hearing Officer

~~§ 60060.32. Order or Decision of the Hearing Officer.~~

~~(a) Unless 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, unless otherwise extended by the hearing officer as provided in these rules. 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 decision with the reasons or grounds upon which the order or decision was made.~~

~~(b) The decision shall be in writing, signed and dated by the hearing officer deciding the proceeding.~~

~~_____ (c) The decision shall be based on findings of fact and may affirm, modify or vacate the Executive Officer determination that was under review.~~

~~(d) If the decision finds that the motor vehicle manufacturer has failed to comply with any of the requirements of Health and Safety Code section 43105.5 or Title 13, CCR section 1969, the decision shall order the motor vehicle manufacturer to come into compliance within 30 days of the effective date of the decision.~~

~~(e) The decision may further order that if the motor vehicle manufacturer fails to come into compliance within the time period set forth in paragraph (e) of this section,~~

~~the hearing officer may order until such time as the motor vehicle manufacturer comes into compliance:~~

~~(1) The motor vehicle manufacturer to pay penalties in an amount not to exceed \$25,000 per day per violation.~~

~~(2) The ARB to suspend consideration of all pending motor vehicle or motor vehicle certification applications for that manufacturer.~~

~~(f) The decision of the hearing officer is the final decision of the ARB and is effective on the date of issuance.~~

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

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

~~(1) Pursuant to the party's request or on the hearing officer's own motion, the hearing officer may issue a revised decision correcting a mistake or clerical error with respect to any matter covered in the decision. 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.~~

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

~~NOTE: Authority cited: Sections 39600, 39601, 43104, 43105.5(e) and (f), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43104, 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.~~

§ 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 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 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 fails to comply within the 30-day time period set forth above, the hearing officer may order that the motor vehicle 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 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, 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.

(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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105.5(e) and (f), Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

§ 60060.33. Penalty Assessment

In determining the appropriate conditional daily penalties that a motor vehicle 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.
- (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, 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 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: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43028, 43031(a) and 44011.6, Health and Safety Code; Section 1969, Title 13, California Code of Regulations.

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 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.

(b 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: Mathews v. Eldridge, 424 U.S. 319 (1976); 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.