

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2014-0711-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Air Resources Board			AGENCY FILE NUMBER (if any)

ENDORSED FILED
IN THE OFFICE OF
2014 AUG 21 PM 2:16

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

2014 JUL 11 PM 3:21
OFFICE OF
ADMINISTRATIVE LAW

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

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Section 100- Repeal of Adjudicatory Hearings		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 17		AMEND	
		REPEAL 60040, 60041, 60042, 60043, 60044, 60045, 60046, 60047, 60048, 60049, 60050, 60051, 60052, and 60053	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) <u>N/A</u>			
7. CONTACT PERSON Amy J. Whiting, Regulations Coordinator		TELEPHONE NUMBER 916-322-6533	FAX NUMBER (Optional) 916-322-3928
		E-MAIL ADDRESS (Optional) awhiting@arb.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Executive Officer

Richard H. Gray, Executive Officer

7/11/14

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 21 2014

Office of Administrative Law

ATTACHMENT 1

SECTION 100 Regulation Order

California Regulations for Adjudicatory Hearings

Repeal sections 60040, 60041, 60042, 60043, 60044, 60045, 60046, 60047, 60048, 60049, 60050, 60051, 60052, and 60053, title 17, California Code of Regulations.

Note: The repeal of the regulation text is set forth below is shown in ~~strikeout~~ to indicate deletions.

Subchapter 1.25. Administrative Procedures – Hearings

~~Article 1. Adjudicatory Hearings~~

~~§ 60040. Applicability.~~

~~(a) The provisions of this article shall apply to all adjudicatory hearings conducted for the purpose of reviewing any of the following decisions of the executive officer:—~~

~~(1) vehicle or engine recalls pursuant to Health and Safety Code Section 43105;~~

~~(2) intention to revoke or suspend a license as a vehicle emission test laboratory pursuant to Section 2048 of Title 13, California Code of Regulations; and~~

~~(3) to other decisions of the executive officer where the person directly affected by the executive officer's action requests a hearing and where an adjudicatory hearing is required by law but neither the administrative adjudication procedures contained in Government Code Sections 11500, et seq. nor other hearing procedures are specified. The provisions of this article do not apply to review of decisions of the executive officer related to the programs or actions of air pollution control or air quality management districts.~~

~~(b) The provisions of this article shall apply to the review of all decisions of the executive officer covered by subparagraph (a) issued prior to the effective date of article 2, sections 60055.1, et seq. All subsequently issued executive officer decisions shall be subject to the procedures set forth in article 2, sections 60055.1, et seq.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60041. Definitions.~~

- ~~(a) "Days" means calendar days.~~
- ~~(b) "Manufacturer working days" means the days when the headquarters of the manufacturer petitioner is open for business.~~

~~NOTE: Authority cited: Section 39600 and 39601, Health and Safety Code.~~
~~Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60042. Petition for Hearing.~~

- ~~(a) Within 20 days after receipt of a decision by the executive officer described in Section 60040, the person directly affected by the decision may file a petition requesting a hearing to review the decision. Notwithstanding the above, a petition for a hearing pursuant to Health and Safety Code Section 43105 may be filed within 30 manufacturer working days of receipt of the executive officer's decision.~~
- ~~(b) Petitions shall be filed with the board secretary at the offices of the state board in Sacramento and shall include the following information:~~
 - ~~(1) the name and address of the petitioner;~~
 - ~~(2) a copy of the executive officer decision for which review is requested;~~
 - ~~(3) the date the decision was received by the petitioner;~~
 - ~~(4) the action the state board is requested to take;~~
 - ~~(5) a complete, verified statement of the facts and relevant evidence; and~~
 - ~~(6) the grounds on which review is requested, including legal argument and authorities. The verification may be on information and belief. The chairperson of the state board shall review the petition and if he/she determines that a hearing is not required by law, the petitioner shall be notified of the decision and there shall be no hearing under this article. The board secretary shall send a copy of the petition to any person who was given written notice of the executive officer's decision.~~

~~NOTE: Authority cited: Section 39600 and 39601, Health and Safety Code.~~
~~Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60043. Effect of Filing a Petition.~~

~~A decision of the executive officer ordering a recall of vehicles or engines or intending to suspend or revoke the license of a vehicle emission test laboratory shall be stayed on timely receipt of a petition requesting a hearing until the state board has filed a decision with the board secretary. Other decisions of the executive officer shall also be stayed until the state board has filed the decision with the board secretary unless the executive officer finds that the adverse effects of a stay on the public health, safety and welfare outweigh the harm to those persons directly affected by the lack of a stay.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.~~

~~Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60044. Executive Officer Response to Petition.~~

~~Within 20 days after receipt of a petition by the board secretary, the executive officer shall file with the board secretary and serve upon the petitioner a response to the petition, except that the executive officer shall file a response within 15 manufacturer-working days to a petition regarding executive officer decisions pursuant to Health and Safety Code Section 43105. The response shall contain the reasons for and the facts in support of the decision of the executive officer under review.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.~~

~~Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60045. Time for and Notice of Hearings.~~

~~(a) A hearing shall be initiated no later than 75 days after receipt of a petition for review except that the hearing shall be initiated no later than 45 manufacturer-working days after receipt of a petition regarding executive officer decisions pursuant to Health and Safety Code Section 43105. The state board may delay the hearing upon a showing of good cause therefore by any party, provided that the petitioner's consent to the delay must be obtained if the executive officer's decision is not stayed.~~

~~(b) The state board shall mail written notice to the petitioner and to any persons who have requested notice at least 30 days before the scheduled date of hearing, indicating the time and location of the hearing, except that the notice shall be mailed 25 manufacturer-working days prior to a hearing regarding an executive officer decision pursuant to Health and Safety Code Section 43105. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. The notice of the hearing shall also be posted in the state board offices in Sacramento and El Monte.~~

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.
Reference: Sections 43105 and 44207, Health and Safety Code.

~~§ 60046. Appointment of Hearing Officers and Presiding Officer.~~

- ~~(a) Hearings under this article may be held by the state board, by a committee of no fewer than two members of the state board, or by an administrative law judge from the Office of Administrative Hearings. In cases where the hearing is conducted by a committee of the state board or an administrative law judge, the committee or administrative law judge shall prepare a recommended decision for consideration by the state board.~~
- ~~(b) When the state board, or a committee of the state board, hears the case, the board or the committee may request that an administrative law judge be present at the hearing to assist in conducting the hearing, and to advise on the admission and exclusion of evidence, and on matters of law.~~
- ~~(c) Notwithstanding Section 60045, if the state board requests that an administrative law judge conduct the hearing or assist in the hearing, the hearing may be delayed if necessary to obtain the services of an administrative law judge. However, when the executive officer's decision is not stayed, no hearing may be delayed beyond 180 days from receipt of the petition without the consent of the petitioner.~~
- ~~(d) The chairperson of the state board may serve as the presiding officer or may designate another member of the state board or the administrative law judge to serve as the presiding officer for the hearing.~~

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.

~~§ 60047. Interested Persons.~~

~~Any person shall have the right to submit written evidence and shall also have the opportunity to present oral evidence, including witnesses and argument, subject to reasonable limitations imposed by the presiding officer. A person shall notify the state board secretary of his/her intent to participate in the hearing at least 20 days prior to the hearing or 15 manufacturer working days prior to the hearing on an executive officer decision pursuant to Health and Safety Code Section 43105.~~

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.

~~§ 60048. Subpoenas.~~

~~The chairperson of the state board, the presiding officer of the hearing, or the administrative law judge may on his or her own motion or at the request of any party in accordance with the provisions of Government Code Section 11510, issue subpoenas for witnesses and for the production of documents at or prior to the hearing. Subpoenas are not required for the production of state board documents which are directly related to the executive officer's decision or which are required to be disclosed under the California Public Records Act (Government Code Section 6250 et seq.). Subpoenas are also not required for attendance at the hearing of members of the state board staff.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 39514, 43105 and 44207, Health and Safety Code.~~

~~§ 60049. Witness List, Prehearing Statement, and Prehearing Conference.~~

- ~~(a) No later than 10 days before the scheduled date of the hearing, or 10 manufacturer working days before the scheduled date of a Health and Safety Code Section 43105 hearing, the petitioner, the executive officer, and any person who has indicated that he/she intends to participate in the hearing shall each submit to the board secretary and serve upon one another a witness list including the name and qualifications of each proposed witness and a brief summary of the testimony to be presented by each witness. All parties shall also send to the board secretary and serve upon one another a prehearing statement which sets forth their respective positions regarding all contested issues.~~
- ~~(b) On the presiding officer's own initiative or on the motion of the petitioner or executive officer, the presiding officer may conduct a prehearing conference. The presiding officer shall set the time and place for the prehearing conference and give reasonable written notice to all parties.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60050. Oaths.~~

~~In hearings under this article, members of the state board, the presiding officer and any administrative law judge assigned to the hearing shall be authorized to administer oaths and affirmations.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60051. Conduct of the Hearing.~~

~~The presiding officer shall govern the conduct of the hearing and shall make decisions on the admissibility of evidence. The following rules shall apply to any hearing held pursuant to the provisions of this article.~~

- ~~(a) The hearing need not be conducted according to the technical rules relating to civil procedure, evidence and witnesses which would apply in a court of law. Any relevant noncumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Relevant noncumulative evidence and legal argument which does not raise significant new issues shall not be denied admission based solely upon the failure of the petitioner to state the evidence or legal argument in the petition for hearing.~~
- ~~(b) Oral testimony offered by any witness shall be under oath.~~
- ~~(c) The petitioner, the executive officer and interested persons shall each, subject to reasonable limitations imposed by presiding officer, have the right to call and examine witnesses, and to introduce exhibits. Parties may cross-examine opposing witnesses and offer rebuttal evidence if the presiding officer determines that cross-examination and rebuttal evidence is necessary to resolve disputed issues of material fact. The rules of privilege shall be effective to the extent that they are otherwise required by California statute to be recognized.~~
- ~~(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.~~
- ~~(e) Official notice may be taken of any generally accepted technical or scientific matter within the state board's field of competence or any matter which may be judicially noticed by the courts of this state. Parties present at the hearing shall be informed of and given an opportunity to rebut the matters proposed to be noticed.~~
- ~~(f) Evidence in the form of affidavits shall be admissible if offered in accordance with Government Code Section 11514.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60052. Decision of the State Board.~~

~~After the hearing, or in the event the hearing is conducted by a committee of the state board or by an administrative law judge, following consideration of the recommendation of the committee or the administrative law judge and the hearing record by the state board, the state board shall issue a written decision setting forth findings and conclusions regarding all issues necessary to the decision. The state board shall file the decision with the board secretary as a public record and shall serve the written decision by certified mail on the petitioner and all other parties. The state board shall specify in the decision a date on which the decision is effective.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43105 and 44207, Health and Safety Code.~~

~~§ 60053. Request for Reconsideration.~~

- ~~(a) Within 20 days after service of the state board's decision, or within 15 manufacturer working days after service of the state board's decision in a hearing pursuant to Health and Safety Code Section 43105, the petitioner or the executive officer may submit a request for reconsideration, which shall include (1) a detailed statement of the legal and factual grounds on which reconsideration is requested; (2) the specific findings and conclusions for which reconsideration is requested; and (3) if additional evidence is sought to be presented, a description of the additional evidence and an explanation of why in the exercise of reasonable diligence it could not have been presented at the hearing. The party requesting reconsideration shall serve the request by certified mail on parties who participated in the original hearing within one day after submitting the request to the state board.~~
- ~~(b) The request for reconsideration may include a request that the decision of the state board be stayed, pending further administrative proceedings pursuant to this article. If such a request is made, the chairperson of the state board shall decide whether or not to stay the decision pending the state board's review of the request for reconsideration. The Chairperson of the state board shall make his/her decision based on his/her evaluation of the merits of the petition, consideration of possible hardship to the party and possible adverse public health impacts.~~
- ~~(c) Within 45 days after the receipt of a request for reconsideration, or for Health and Safety Code Section 43105 hearings within 30 manufacturer working days after receipt of a request for reconsideration, the state board shall decide whether to grant or deny the request. The state board may decide to reconsider its entire decision or any portion thereof. The state board shall serve written notice of its decision to grant or to deny reconsideration on the party requesting reconsideration and all participants in the prior hearing. If reconsideration is granted, the written notice shall describe any further proceedings.~~

~~(d) If reconsideration is granted, and if the party requesting reconsideration also requested a stay of the decision of the state board, the state board shall decide whether the stay shall be granted. If the request for reconsideration is denied, any stay of the decision pending state board review of the reconsideration request shall be dissolved.~~

~~NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code; Reference: Sections 43105 and 44207, Health and Safety Code.~~