

State of California
Air Resources Board

UPDATED INFORMATIVE DIGEST

**ADOPTION OF REVISIONS TO ARB'S ADMINISTRATIVE HEARING
PROCEDURES FOR ADMINISTRATIVE HEARINGS FOR COMPLAINTS AND
CITATIONS**

Sections Affected

Title 17, California Code of Regulations, sections 60065.1 et seq. (Administrative Hearing Procedures for Review of Complaints, and 60075.1 et seq. (Administrative Hearing Procedures the Review of Citations).

Background

Most enforcement actions brought by the Air Resources Board (ARB) are resolved through negotiated settlements. In a negotiated settlement, the source is brought into compliance as quickly as possible and pays a monetary settlement in lieu of civil penalties. In those cases where ARB is unable to reach an acceptable settlement with a violator, the matter must be pursued in the courts. This process, while necessary, is both costly and cumbersome. In 1990, the Legislature authorized the ARB to adopt an administrative hearing process to adjudicate violations of the Heavy Duty Vehicle Inspection Program (HDVIP) and assessment of administrative civil penalties (Health and Safety Code section 44011.6). That authority was expanded in 1995, with the adoption of chapter 1.5 of part 5 of division 2 of the Health and Safety Code, which provided the ARB with authority to establish, among other things, administrative procedures to assess and adjudicate civil penalties for violations of ARB fuel-related regulations. (See Health and Safety Code sections 43028(a) and 43031.)

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

The legislation also specifically directs the ARB to use its existing administrative hearing regulations to implement the penalty assessment program. To this end, the ARB adopted modifications to title 17, CCR section 60065.1 et seq.

(Administrative Hearing Procedures for the Review of Complaints) and CCR section 60075.1 et seq. (Administrative Hearing Procedures for the Review of Citations) to address the specific directives of the legislation. In initially adopting administrative hearing procedures, the ARB established a two-tiered enforcement hearing process. This process provides for complaints to be issued for the most serious and complex violations – subject to higher penalty assessments – and citations to be issued for less serious, less complex, and more clear cut violations

The Regulations

The ARB has broadened the existing administrative penalty assessment and hearing procedures to allow for the issuance of administrative citations and complaints for all violations covered in SB 527. The existing administrative penalty provisions that provide for the issuance of citations and fuel-related complaints have not been changed. Because of the different maximum penalties that may be assessed for fuel violations and violations covered by SB 527, the amendments separately set forth the ARB's authority to assess penalties for violations covered by SB 527.

Consistent with other directives of SB 527, title 17, CCR §60065 et seq. and CCR §60075 et seq. have been modified to:

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

Comparable Federal Regulations

The United States Environmental Protection Agency (U.S. EPA) does have hearing procedure regulations, but they do not apply to matters heard under the ARB's administrative hearing procedures.