

HEALTH AND SAFETY CODE
DIVISION 26. Air Resources
PART 3. Air Pollution Control Districts
CHAPTER 8. Hearing Boards
ARTICLE 1. General Provisions

Cal Health & Saf Code § 40800 (1999)

§ 40800. Existence of hearing boards; Appointment of alternates

There is continued in existence and shall be, in each district, one or more hearing boards consisting of five members each, as specified in Section 40801, appointed by the district board.

The district board may also appoint one alternate for each member. The alternate shall have the same qualifications, specified in Section 40801, as the member for whom such person is the alternate. The alternate may serve only in the absence of the member, and for the same term as the member.

An alternate shall not hold any of the single member hearings authorized by subdivision (c) of Section 40824, subdivision (c) of Section 40825, Section 42351.5, or Section 42359.5.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1979 ch 239 § 3, effective July 10, 1979.

Cal Health & Saf Code § 40800.5 (1999)

§ 40800.5. Designation of hearing board as district hearing panel

Any district board may designate the hearing board appointed by it as the "district hearing panel." Every provision of every statute and every regulation that relates to hearing boards appointed pursuant to this chapter shall be fully applicable to any district hearing panel that is so designated pursuant to this section.

HISTORY:

Added Stats 1988 ch 1412 § 5.

Cal Health & Saf Code § 40801 (1999)

§ 40801. Membership

A hearing board shall consist of:

- (a) One member admitted to the practice of law in this state.
- (b) One member who is a professional engineer registered as such pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).
- (c) One member from the medical profession whose specialized skills, training, or interests are in the fields of environmental medicine, community medicine, or occupational/toxicologic medicine.
- (d) Two public members.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40802 (1999)

§ 40802. Counties having population of less than 750,000

If the district board, in the case of a district with a population of less than 750,000, is unable to appoint a person with the qualifications specified in Section 40801 who is willing and able to serve, and for that reason a vacancy exists on the hearing board, the county district board may, in order to fill that vacancy, appoint any person to the hearing board.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1980 ch 159 § 1, ch 203 § 1.
Amended Stats 1990 ch 150 § 1 (AB 3124).

Cal Health & Saf Code § 40803 (1999)

§ 40803. Membership by officer or employee

No officer or employee of the district, or of the county in the case of a county district, shall be a member of the district hearing board.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40804 (1999)

§ 40804. Terms of office

The terms of the members of a hearing board shall be three years.

In the case of the initial members of a hearing board appointed subsequent to January 1, 1974, two shall serve for a term of one year, two for a term of two years, and one for a term of three years.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40805 (1999)

§ 40805. Time for appointment

Within 30 days after a regional district begins to function and exercise its powers, the regional district board shall appoint a hearing board.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40806 (1999)

§ 40806. Chairman

A hearing board shall select a chairman from its members.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40807 (1999)

§ 40807. Rules governing conduct of hearings

A hearing board may adopt rules for the conduct of its hearings. The rules shall be consistent with this division and, so far as practicable, shall conform to the rules for administrative adjudication by state agencies in Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

Where a district has two or more hearing boards, the rules shall be the same for all the hearing boards.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1976 ch 1063 § 30, effective September 21, 1976.

Cal Health & Saf Code § 40808 (1999)

§ 40808. Public hearings

Except as provided for in Section 42359, no abatement order, permit, or variance may be issued, modified, or revoked by a hearing board, unless a public hearing thereon has been held by the hearing board pursuant to this chapter.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40809 (1999)

§ 40809. Representation of district and hearing board by county counsel

(a) The office of the county counsel may represent both the district and the hearing board on a matter relating to a hearing before the hearing board as long as the same individual attorney does not represent both the district and the hearing board.

(b) This section does not apply to the bay district or the south coast district.

HISTORY:

Added Stats 1986 ch 28 § 1.

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Cal Health & Saf Code § 40820 (1999)

§ 40820. Quorum

Except as provided in Section 40501.1, subdivision (c) of Section 40824, subdivision (c) of Section 40825, Section 42351.5, and Section 42359.5, three members of the hearing board shall constitute a quorum, and no action shall be taken by the hearing board except in the presence of a quorum and upon the affirmative vote of a majority of the members of the hearing board.

HISTORY:

Added Stats 1988 ch 1412 § 7.

Cal Health & Saf Code § 40821 (1999)

§ 40821. Rehearing

A hearing board, with not fewer than four members present, may, in its discretion, within 30 days of the effective date of the decision, rehear any matter.

HISTORY:

Added Stats 1975 ch 957 § 12. Amended Stats 1978 ch 1107 § 1.

Amended Stats 1988 ch 1412 § 8.

Cal Health & Saf Code § 40822 (1999)

§ 40822. Location of hearings

Any hearing conducted by a hearing board shall be held in a location readily accessible to the public.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40823 (1999)

§ 40823. Notice of hearings

(a) Except as otherwise provided in Sections 40824, 40825, and 40826, a hearing board shall serve a notice of the time and place of a hearing upon the district air pollution control officer, and upon the applicant or permittee affected, not less than 10 days prior to such hearing.

(b) Except as otherwise provided in Sections 40824, 40825, and 40826, the hearing board shall also send notice of the hearing to every person who requests such notice and obtain publication of such notice in at least one daily newspaper of general circulation within the district. The notice shall state the time and place of the hearing and such other information as may be necessary to reasonably apprise the people within the district of the nature and purpose of the meeting.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40824 (1999)

§ 40824. Notice of hearings; Application for interim variance

In case of a hearing to consider an application for an interim variance, as authorized under Section 42351:

(a) The hearing board shall serve reasonable notice of the time and place of the hearing upon the district air pollution control officer and upon the applicant.

(b) Subdivision (b) of Section 40823 shall not apply.

(c) In districts with a population of less than 750,000, the chairperson of the hearing board, or any other member of the hearing board designated by the board, may hear an application for an interim variance. If any member of the public contests a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1976 ch 1063 § 31, effective September 21, 1976; Stats 1978 ch 1107 § 2.

Amended Stats 1987 ch 362 § 1.

Cal Health & Saf Code § 40825 (1999)

§ 40825. Notice of hearings; Application for 90-day variance

In case of a hearing to consider an application for a variance, or a series of variances, to be in effect for a period of not more than 90 days, or an application for modification of a schedule of increments of progress:

(a) The hearing board shall serve a notice of the time and place of a hearing to grant such a variance or modification upon the air pollution control officer, all other districts within the air basin, the state board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 10 days prior to such hearing.

(b) Subdivision (b) of Section 40823 shall not apply.

(c) In districts with a population of less than 750,000, the chairman of the hearing board, or any other member of the hearing board designated by the board, may hear such an application. If any member of the public contests a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1978 ch 1107 § 3.
Amended Stats 1987 ch 362 § 2.

Cal Health & Saf Code § 40826 (1999)

§ 40826. Notice of hearings; Application for other variance

In case of a hearing to consider an application for a variance, other than an interim variance or a 90-day variance, or an application for a modification of a final compliance date in a variance previously granted, the notice requirements for the hearing shall be as follows:

(a) The hearing board shall serve a notice of the time and place of a hearing to grant a variance upon the air pollution control officer, all other districts within the air basin, the state board, the Environmental Protection Agency, and upon the applicant or permittee, not less than 30 days prior to the hearing, except as provided in subdivision (d).

(b) The hearing board shall also publish a notice of the hearing in at least one daily newspaper of general circulation in the district, and shall send the notice to every person who requests the notice, not less than 30 days prior to the hearing, except as provided in subdivision (d).

(c) The notice shall state the time and place of the hearing; the time when, commencing not less than 30 days, or, under subdivision (d), not less than 15 days, prior to the hearing, and place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection; and any other information that may be necessary to reasonably apprise the people within the district of the nature and purpose of the meeting.

(d) In districts with a population of 750,000 or less, the hearing board shall serve, publish, and send the notice pursuant to subdivisions (a) and (b) not less than 15 days prior to the hearing.

HISTORY:

Added Stats 1975 ch 957 § 12. Amended Stats 1976 ch 1063 § 32, effective September 21, 1976.
Amended Stats 1992 ch 1096 § 2 (AB 2781), effective September 28, 1992.

Cal Health & Saf Code § 40827 (1999)

§ 40827. Service of notice

A hearing board shall serve a notice of the time and place of a hearing either by personal service or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the hearing board shall serve such person by publication of notice in the district pursuant to Section 6061 of the Government Code.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40828 (1999)

§ 40828. Witnesses and testimony

(a) A hearing board shall allow interested members of the public a reasonable opportunity to testify with regards to the matter under consideration, and shall consider such testimony in making its decision.

(b) The hearing board shall prepare a record of the witnesses and the testimony of each witness at the hearing. Such a record may be a tape recording. The record shall be retained by the hearing board while the variance is in effect, or for the period of one year, whichever is longer.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40829 (1999)

§ 40829. Administration of oaths

Any member of a hearing board may administer oaths in any hearing in which he participates as a member of the hearing board.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40830 (1999)

§ 40830. Sworn testimony

At any hearing, a hearing board shall require any witness to be sworn before testifying.

HISTORY:

Added Stats 1975 ch 957 § 12.

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ARTICLE 3. Subpoenas

Cal Health & Saf Code § 40840 (1999)

§ 40840. Authority to issue

Whenever the members of a hearing board conducting any hearing deem it necessary to examine any person as a witness at the hearing, the chairman of the hearing board shall issue a subpoena, in proper form, commanding such person to appear before it at a time and place specified to be examined as a witness. The subpoena may require such person to produce all books, papers, and documents in his possession, or under his control, material to the hearing.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40841 (1999)

§ 40841. Service

A subpoena to appear before a hearing board shall be served in the same manner as a subpoena in a civil action.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40842 (1999)

§ 40842. Failure to comply; Contempt

Whenever any person duly subpoenaed to appear and give evidence, or to produce any books and papers, before a hearing board neglects or refuses to appear, or to produce any books and papers, as required by the subpoena, or refuses to testify or to answer any question which the hearing board decides is proper and pertinent, he shall be deemed in contempt, and the hearing board shall report the fact to the superior court of the county in which the hearing is held.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40843 (1999)

§ 40843. Superior court proceedings

Upon receipt of a report submitted pursuant to Section 40842, the superior court shall proceed as specified in Section 11455.20 of the Government Code.

HISTORY:

Added Stats 1975 ch 957 § 12, operative until July 1, 1997.

Amended Stats 1995 ch 938 § 71.5 (SB 523), operative July 1, 1997.

Cal Health & Saf Code § 40844 (1999)

§ 40844. Jurisdiction; Penalties

On the return of the attachment and the production of the body of the defendant, the superior court has jurisdiction of the matter. The person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

HISTORY:

Added Stats 1975 ch 957 § 12.

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ARTICLE 4. Decisions

Cal Health & Saf Code § 40860 (1999)

§ 40860. Announcement in writing; Copies

A hearing board shall announce its decision in writing. Copies of the decision shall immediately be filed with its clerk and mailed to all of the parties or their attorneys.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40861 (1999)

§ 40861. Rehearing

A hearing board may rehear a decision if a party petitions for a rehearing within 10 days after a copy of the decision has been mailed to him.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40862 (1999)

§ 40862. Reasons

The decision of a hearing board shall include the reasons for the decision.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 40863 (1999)

§ 40863. Effective date

The decision shall become effective upon filing, unless the hearing board orders otherwise.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1976 ch 1113 § 1.

Cal Health & Saf Code § 40864 (1999)

§ 40864. Judicial review

(a) Judicial review may be had of a decision of a hearing board by filing a petition for a writ of mandate in accordance with Section 1904.5 of the Code of Civil Procedure. Except as otherwise provided in this section, any such petition shall be filed within 30 days after the decision has been mailed pursuant to Section 40860. The right to petition shall not be affected by the failure to seek a rehearing before the hearing board.

(b) The complete record of the proceedings, or such parts thereof as are designated by the petitioner, shall be prepared by the hearing board and shall be delivered to the petitioner within 30 days after a request therefor by him, upon payment of the fee specified in Section 69950 of the Government Code for the transcript, the cost of preparation of other portions of the record, and for certification thereof.

(c) The complete record includes the pleadings, all notices and orders issued by the hearing board, any proposed decision by the hearing board, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence, and any other papers in the case.

(d) Where the petitioner, within 10 days after the last day on which a rehearing can be ordered, requests the hearing board to prepare all or any part of the record, the time within which a petition may be filed shall be extended until five days after its delivery to him. The hearing board may file with the court the original of any document in the record in lieu of a copy thereof.

HISTORY:

Added Stats 1975 ch 957 § 12. Amended Stats 1976 ch 1113 § 2.

Cal Health & Saf Code § 40865 (1999)

§ 40865. Evidence

In any proceeding pursuant to Section 40864, the court shall receive in evidence any order, rule, or regulation of the district board, any transcript of the proceedings before the hearing board, and such further evidence as the court, in its discretion, deems proper.

HISTORY:

Added Stats 1975 ch 957 § 12.

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PART 4. Nonvehicular Air Pollution Control
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ARTICLE 2. Variances

Cal Health & Saf Code § 42350 (1999)

§ 42350. Application; Prohibited variances

(a) Any person may apply to the hearing board for a variance from Section 41701 or from the rules and regulations of the district.

(b) (1) If the district board has established a permit system by regulation pursuant to Section 42300, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

(2) Title V sources shall not be granted a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use.

(3) In districts with emission-capped trading programs, no variance shall be granted from the emission cap requirement.

HISTORY:

Added Stats 1975 ch 957 § 12. Amended Stats 1976 ch 1113 § 4.

Amended Stats 1993 ch 1166 § 11 (AB 2288); Stats 1996 ch 618 § 5 (SB 2170).

Cal Health & Saf Code § 42350.5 (1999)

§ 42350.5. Notice to small businesses of assistance available

Any form developed by a district board for use in filing an application for a variance shall contain a notice to small businesses of the availability of assistance in filling out the form and developing compliance schedules.

HISTORY:

Added Stats 1992 ch 1126 § 4 (AB 3790).

Cal Health & Saf Code § 42351 (1999)

§ 42351. Interim variance

(a) Any person who has submitted an application for a variance and who desires to commence or continue operation pending the decision of the hearing board on the application, may submit an application for an interim variance.

(b) An interim variance may be granted for good causes stated in the order granting such a variance. The interim variance shall not be valid beyond the date of decision of the hearing board on the application of the variance or for more than 90 days from date of issuance of the interim variance, whichever occurs first.

(c) The hearing board shall not grant any interim variance (1) after it has held a hearing in compliance with the requirements of Section 40826, or (2) which is being sought to avoid the notice and hearing requirements of Section 40826.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1976 ch 1063 § 41, effective September 21, 1976.

Cal Health & Saf Code § 42351.5 (1999)

§ 42351.5. Interim authorization for modification of schedule of increments of progress

If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing board sufficiently in advance to allow the hearing board to schedule a public hearing on the application, the hearing board may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application. In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests such a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision. The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

HISTORY:

Added Stats 1976 ch 1113 § 5; Amended Stats 1978 ch 1107 § 5.

Amended Stats 1990 ch 150 § 2 (AB 3124).

Cal Health & Saf Code § 42352 (1999)

§ 42352. Findings prerequisite to grant of variance

(a) No variance shall be granted unless the hearing board makes all of the following findings:

(1) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

(2) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business. In making those findings where the petitioner is a public agency, the hearing board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this paragraph, "essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(3) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

(b) As used in this section, "public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

HISTORY:

Added Stats 1975 ch 957 § 12. Amended Stats 1976 ch 1063 § 42, effective September 21, 1976.

Amended Stats 1988 ch 1568 § 30; Stats 1992 ch 1025 § 1 (SB 1728).

Cal Health & Saf Code § 42352.5 (1999)

§ 42352.5. Considerations in determining whether petitioner has presented sufficient evidence to make findings

(a) The hearing board, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 42352 or paragraph (2) of subdivision (a) of Section 42368, shall consider, in addition to any other relevant factors, both of the following:

(1) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the hearing board shall consider the extent to which the petitioner took actions to comply or seek a variance, which were timely and reasonable under the circumstances. In so doing, the hearing board shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the variance is sought.

(2) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.

(b) (1) As used in this subdivision, "small business" has the same meaning as defined by the Small Business Administration, except that no stationary source which is a major source, as defined by applicable provisions of the federal Clean Air Act (42 U.S.C. Sec. 7661(2)), is a small business.

(2) If the petitioner is a small business and emits 10 tons or less per year of air contaminants, the hearing board shall consider the factors specified in subdivision (a) in the following manner:

(A) In determining the extent to which the petitioner took timely actions to comply or seek a variance, the hearing board shall make specific inquiries into, and shall take into account, the reasons for any claimed ignorance of the requirement from which a variance is sought.

(B) In determining the extent to which the petitioner took reasonable actions to comply, the hearing board shall make specific inquiries into, and shall take into account, the petitioner's financial and other capabilities to comply.

(C) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the hearing board shall make specific inquiries into, and shall consider, the impact on the petitioner's business and the benefit to the environment which would result if the petitioner is required to immediately comply.

HISTORY:

Added Stats 1992 ch 1126 § 5 (AB 3790).

Amended Stats 1994 ch 443 § 1 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42353 (1999)

§ 42353. Imposition of additional requirements

Upon making the specific findings set forth in Section 42352, the hearing board shall prescribe requirements other than those imposed by statute or by any rule, regulation, or order of the district board, not more onerous, applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of individual persons. However, no variance shall be granted if the operation, under the variance, will result in a violation of Section 41700.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42354 (1999)

§ 42354. Discretion of hearing board

In prescribing other and different requirements, in accordance with Section 42353, the hearing board, insofar as is consonant with the Legislature's declarations in Sections 39000 and 39001, shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with such requirements.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42355 (1999)

§ 42355. Bond

(a) The hearing board may require, as a condition of granting a variance, that a bond be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. The bond may provide that, if the party granted the variance fails to perform the work by the agreed date, the bond shall be forfeited to the district having jurisdiction, or the sureties shall have the option of promptly remedying the variance default or paying to the district an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(b) The provisions of this section do not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1982 ch 517 § 277.

Cal Health & Saf Code § 42356 (1999)

§ 42356. Modification or revocation of order

The hearing board may modify or revoke, by written order, any order permitting a variance.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42357 (1999)

§ 42357. Modification of schedule of increments of progress

The hearing board may review and for good cause, such as a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in such a schedule.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42358 (1999)

§ 42358. Period of variance

(a) The hearing board, in making any order permitting a variance, shall specify the time during which such order shall be effective, in no event, except as otherwise provided in subdivision (b), to exceed one year, and shall set a final compliance date.

(b) A variance may be issued for a period exceeding one year if the variance includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the variance is granted will be brought into compliance with applicable emission standards.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42359 (1999)

§ 42359. Hearing

Except in the case of an emergency, as determined by the hearing board, the hearing board shall hold a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 to determine under what conditions, and to what extent, a variance shall be granted.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42359.5 (1999)

§ 42359.5. Emergency variance

(a) Notwithstanding any other provision of this article or of Article 2 (commencing with Section 40820) of Chapter 8 of Part 3, the chairman of a district hearing board, or any other member of the hearing board designated thereby, may issue, without notice and hearing, an emergency variance to an applicant.

(b) An emergency variance may be issued for good cause, including, but not limited to, a breakdown condition. The district board in consultation with its air pollution control officer and the hearing board may adopt rules and regulations, not inconsistent with this subdivision, to further specify the conditions, and to what extent, an emergency variance may be granted.

The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of Section 40824 or 42351.

HISTORY:

Added Stats 1976 ch 773 § 1; Amended Stats 1979 ch 239 § 5, effective July 10, 1979.

Cal Health & Saf Code § 42360 (1999)

§ 42360. Submission of order to state board

Within 30 days of any order granting, modifying, or otherwise affecting a variance by the hearing board, or a member thereof pursuant to Section 42359.5, either the air pollution control officer or the hearing board shall submit a copy of the order to the state board.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1976 ch 773 § 2.

Cal Health & Saf Code § 42361 (1999)

§ 42361. Variance granted by county or unified district included within regional district

Any variance granted by the hearing board of a county district or a unified district, or any member of such a hearing board pursuant to Section 42359.5, applicable in an area which subsequently becomes included within a regional district, including the bay district, shall remain valid for the time specified therein or for one year, whichever is shorter, or, unless prior to the expiration of such time, the hearing board of the regional district modifies or revokes the variance.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1976 ch 773 § 3.

Cal Health & Saf Code § 42362 (1999)

§ 42362. Revocation or modification by state board

The state board may revoke or modify any variance granted by any district if, in its judgment, the variance does not require compliance with a required schedule of increments of progress or emission standards as expeditiously as practicable, or the variance does not meet the requirements of this article.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42363 (1999)

§ 42363. Hearing by state board

Prior to revoking or modifying a variance pursuant to Section 42362, the state board shall conduct a hearing pursuant to Chapter 8 (commencing with Section 40800) of Part 3 on the matter. The person to whom the variance was granted shall be given immediate notice of any such hearing by the hearing board, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if he were a party to the hearing.

HISTORY:

Added Stats 1975 ch 957 § 12.

Cal Health & Saf Code § 42364 (1999)

§ 42364. Fees

(a) The district board may adopt, by regulation, a schedule of fees which will yield a sum not exceeding the estimated cost of the administration of this article and for the filing of applications for variances or to revoke or modify variances. All applicants shall pay the fees required by the schedule, including, notwithstanding the provisions of Section 6103 of the Government Code, an applicant that is a publicly owned public utility.

(b) All such fees shall be paid to the district treasurer to the credit of the district.

HISTORY:

Added Stats 1975 ch 957 § 12; Amended Stats 1977 ch 1195 § 10, effective October 1, 1977.

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DIVISION 26. Air Resources
PART 4. Nonvehicular Air Pollution Control
CHAPTER 4. Enforcement
ARTICLE 2.5. Product Variances

Cal Health & Saf Code § 42365 (1999)

§ 42365. Petition for product variance from rule or regulation

Any person who manufactures a product may petition the hearing board for a product variance from a rule or regulation of the district pursuant to this article.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42366 (1999)

§ 42366. Availability limited to particular product not complying with district rules and regulations

A product variance is only available if, to provide effective relief, the variance is required to be granted for, and attached to, a particular product, as distinguished from the variance that may be granted to an individual petitioner pursuant to Section 42352. A product variance shall be granted only when a product does not comply with district rules or regulations and the variance is necessary for the sale, supply, distribution, or use of the product.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42367 (1999)

§ 42367. Permit to build, erect, alter, or replace equipment or other contrivance

No product variance shall be granted pursuant to this article from a requirement for a permit to build, erect, alter, or replace any article, machine, equipment, or other contrivance pursuant to Section 42300.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42368 (1999)

§ 42368. Required findings

(a) No product variance shall be granted unless the hearing board makes all of the following findings:

(1) The manufacture, distribution, offering for sale, sale, application, soliciting the application, or use of the product is, or will be, in violation of a rule, regulation, or order of the district.

(2) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.

(3) The taking or closing would be without a corresponding benefit in reducing air contaminants.

(4) The petitioner exercised due diligence in attempting to locate, research, or develop a product that is in compliance with district rules and regulations.

(5) During the period that the product variance is in effect, the petitioner shall quantify any excess emissions to the maximum extent feasible and report the emission levels to the district, if requested by the district.

(b) If the product variance is granted subject to conditions on the use of the product, within 10 days from the effective date of the variance, and for the duration of the time period of the variance, the petitioner shall cause a written notice to be furnished to any retailer, distributor, and purchaser of the product who is located within the district. The written notice shall be, attached to, or otherwise accompany, the product, and shall include all of the following information:

(1) That the product is being sold pursuant to a product variance granted by the district hearing board.

(2) The beginning and ending dates of the product variance.

(3) Any other conditions set forth in the product variance.

(c) Within 10 days from the effective date of the granting of the product variance, the district shall cause to be published pursuant to Section 6061 of the Government Code, the information specified in subdivision (b).

(d) The district hearing board may prescribe requirements or conditions in the product variance that are applicable to the product, other than those imposed by statute or by any rule, regulation, or order of the district board, if those requirements or conditions are not more onerous.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42369 (1999)

§ 42369. Prohibited variances

(a) No product variance shall be granted if the use of the product under the variance will result in a violation of Section 41700.

(b) No emergency product variance shall be granted pursuant to this article.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42370 (1999)

§ 42370. Effect of granting variance

If the product variance is granted and the product is in compliance with subdivisions (b) and (d) of Section 42368, the petitioner may manufacture, and any person may distribute, offer for sale, sell, apply, solicit the application of, or use the product under the conditions set forth in the product variance.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42371 (1999)

§ 42371. Applicable provisions

Sections 42350.5, 42351, 42351.5, 42352.5, 42354 to 42357, inclusive, 42359, and 42362 to 42364, inclusive, shall apply to the granting of product variances pursuant to this article.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.

Cal Health & Saf Code § 42372 (1999)

§ 42372. Time limits of product variance; Public hearing on change in district rule or regulation to bring product into compliance

(a) The hearing board, in making any order permitting a product variance, shall specify the time during which the order shall be effective, which, except as provided in subdivision (b), shall not exceed one year, and shall set a final compliance date.

(b) A product variance may be issued for a period exceeding one year, but in no event to exceed two years from the date of the granting of the initial product variance, if the product variance includes a schedule of increments of progress specifying a final compliance date by which the emission of air contaminants from the product for which the product variance is granted will be brought into compliance with applicable emission standards and all district rules, regulations, and orders. No extension may be granted to a petitioner without a showing of good cause and proof of compliance with the findings required by Section 42368.

(c) If the product variance is for a process or product that is equivalent to, or exceeds, the applicable standards required by the district's rules and regulations, and the hearing board granting the variance specifies that the only way to achieve compliance will be for the district to adopt or amend a rule or regulation, the air pollution control officer within 180 days from the effective date of the variance, shall set a public hearing before the district governing board and make a recommendation on whether or not the board should adopt or amend a rule or regulation to bring the product into compliance. The district governing board shall, within one year of the effective date of the variance, take action to (1) adopt or amend a district rule or regulation to bring the product into compliance, or (2) determine that no amendment, rule, or regulation is warranted. If the district governing board fails to take either action, nothing in this subdivision shall limit the petitioner's rights and remedies under existing law.

HISTORY:

Added Stats 1994 ch 443 § 2 (AB 2680), effective September 7, 1994.