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HEALTH AND SAFETY CODE - HSC

DIVISION 26. AIR RESOURCES [39000 - 44475.3] (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)

PART 4. NONVEHICULAR AIR POLLUTION CONTROL [41500 - 42710] (*Part 4 added by Stats. 1975, Ch. 957.*)

CHAPTER 4. Enforcement [42300 - 42454] (*Chapter 4 added by Stats. 1975, Ch. 957.*)

ARTICLE 2.5. Product Variances [42365 - 42372] (*Article 2.5 added by Stats. 1994, Ch. 443, Sec. 2.*)

[42365.](#) 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.

(*Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.*)

[42366.](#) 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.

(*Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.*)

[42367.](#) 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.

(*Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.*)

[42368.](#) (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.

(Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.)

42369. (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.

(Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.)

42370. 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.

(Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.)

42371. 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.

(Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.)

42372. (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.

(Added by Stats. 1994, Ch. 443, Sec. 2. Effective September 7, 1994.)