

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures–Hearings

**Article 3. Administrative Hearing Procedures for
Petitions for Review of Complaints**

Subarticle 7. Hearings

§ 60065.35. Evidence by Affidavit or 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 affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subdivision (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 affiant or declarant the opposing party's right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified orally. If an opportunity to cross-examine an affiant or declarant is not afforded after request therefore is made as herein provided, the hearing officer may allow the affidavit or declaration to be introduced, but if it is allowed to be introduced, it shall only be given the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be a separate document concurrently served with the affidavit or declaration, entitled "Notice of Intent to Use Declaration or Affidavit 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 affidavit or declaration of [insert name of affiant or 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 affiant or declarant unless you notify [insert name of the proponent, representative, agent or attorney] at [insert address] that you wish to cross-examine the affiant or declarant. To be effective, your request must be mailed or delivered to [insert name of proponent, representative, agent or attorney] on or before [insert a date 7 days after the date of mailing or delivery of the affidavit to the opposing party]."

NOTE: Authority cited: Sections 39600, 39601, 43028 and 43031(a), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Sections 43028 and 43031(a), Health and Safety Code.

REFERENCE