

Memorandum 98-22

Environment Code: Parts 1 and 2 of Division 4 (Air Resources)

Attached to this memorandum is a staff draft of Parts 1 and 2 of Division 4 of the proposed Environment Code, relating to air quality. A staff draft of conforming revisions and a disposition table showing the relationship between existing code sections and their corresponding proposed Environment Code sections are also attached. Noteworthy aspects of the staff draft are discussed below.

GOVERNOR'S REORGANIZATION PLAN

A few sections of the attached draft were most recently affected by Governor's Reorganization Plan Number 1 of 1991. Because the effects of this reorganization plan were never codified by a followup bill, enactment of these sections in the Environment Code codifies the effect of the reorganization plan as relates to these sections. This is indicated in the comments to these sections. For a fuller discussion of Governor's Reorganization Plans, see Memorandum 98-20.

OPERATION CONTINGENCY

A number of sections within the Air Resources division are subject to an operative date contingency. See, e.g., proposed sections 30150, 30245, 30430 & Comments. Section 32 of Chapter 1192 of the Statutes of 1994, which enacted these sections, provides:

(a) This act ... shall not become operative until both of the following occur:

(1) The system required by subdivision (b) of Section 44060 of the Health and Safety Code for the electronic filing of certificates of compliance or noncompliance is determined to be operational by the Department of Consumer Affairs and that fact is reported by the department to the Secretary of State.

(2) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District have sufficient funds available to implement the pilot program established pursuant to subdivision (b) of Section 43705 of the Health and Safety Code, as

determined by each of those districts and reported by each district to the Secretary of State.

(b) On the date that all of the reports have been received by the Secretary of State pursuant to subdivision (a) ... this act shall become operative.

An initial inquiry to the Secretary of State's office did not reveal whether the required reports had been filed.

Because of the difficulty in determining whether the contingency has occurred, it is not presently possible to determine whether these sections ever became operative. To complicate matters, most of them contain a sunset provision that is triggered five years after the section becomes operative. For these sections, it is not only difficult to determine whether they became operative, it is also difficult to determine whether they subsequently became inoperative and were repealed by their own terms.

The staff is investigating further, in an effort to determine whether these sections ever became operative, and if so, when. The staff recommends replacing references to the contingency with specific dates, if possible.

OBSOLETE PROVISIONS

The staff has identified a number of provisions that appear to be obsolete. In some cases, obsolescence is clear and the provision has not been continued. In these cases, the failure to continue the obsolete provision is noted in the Comment to the relevant section. In other cases, obsolescence is less clear. Staff notes to these sections raise the issue of obsolescence and request public input on the continued usefulness of the apparently obsolete provision.

Start Dates

A number of sections impose duties on state agencies, or change their procedures, beginning on a specified date. These dates have historical relevance, but appear to have no continuing legal effect. These apparently obsolete dates are not continued in the attached draft, but are noted in the corresponding Comments. See proposed Sections 31100-31101, 31301-31302, 31400, 31453, 32153 & Comments.

Deadlines

A number of sections specify deadlines by which state agencies were to complete some task. These provisions appear to be obsolete, but may have some

continuing relevance if an agency has not yet complied with the requirement. Staff notes to the following sections raise this issue and request input on the continued relevance of the deadline provisions: proposed Sections 31251, 31300, 31303, 31350, 31453, 31807, 31808.

Funding references

Subdivisions (c) and (d) of Health and Safety Code Section 39668 contain references to a funding amount specified in an uncodified section of the act that enacted that section. See proposed Sections 31809-31810 & Comments. This funding appears to be a one-time allocation, in which case these references are obsolete. The staff notes to these sections request input on this point.

Effect of Enactment

Health and Safety Code Sections 39004 and 39005 govern the effect of the 1975 reenactment of the Air Resources division. They provide as follows:

39004. The reenactment of this division by the Legislature during the 1975-76 Regular Session of the Legislature shall have no effect on the existence of any district board, or the terms of any members thereof.

39005. The reenactment of this division by the Legislature during the 1975-76 Regular Session of the Legislature shall have no effect on any order, rule, or regulation of any district or of the state board, unless such order, rule, or regulation, as the case may be, is not consistent with the provisions of this division.

These transitional provisions appear to be obsolete. They are omitted from the attached draft. See the staff note following proposed section 30003.

Subdivision (b) of Health and Safety Code Section 39675 provides that adoption of Section 39675 codified then existing law. See proposed section 31901 and Comment. This provision may be obsolete (Section 39675 was enacted in 1990). Furthermore, enactment of similar language in proposed Section 31901 may lead to confusion as to the status of relevant case law that has developed in the time between the enactment of Section 39675 and proposed Section 31901. The staff has therefore omitted subdivision (b) in the attached draft.

SECTIONS BETTER LOCATED ELSEWHERE IN CODE

Health and Safety Code Section 39663 requires the State Air Resources Board to study ways to control landfill gas emissions and to convert those gases from waste products to commodities. See proposed Section 31757. This section is currently located in an article generally requiring the State Air Resources Board to identify toxic air contaminants and evaluate their health effects. This does not seem to be the best location for Section 39663. It may be more appropriately located in proposed Part 4 (Nonvehicular Air Pollution Control) or in proposed Part 13 (Landfill Gas) of Division 5 (Toxic and Hazardous Substances). The staff will revisit this section when those parts are being drafted.

Health and Safety Code Section 39664 requires the State Department of Health Services to study the long term health effects of aerial application of pesticides in urban areas. See proposed Section 31758. This section is located in the chapter governing the duties and powers of the State Air Resources Board. It does not make sense to include a provision that has nothing to do with the State Air Resources Board in this chapter. It may be more appropriately located in proposed Division 6 (Pesticides). The staff will revisit this section when that division is being drafted.

CROSS REFERENCES

As we proceed with drafting of the various parts of the Environment Code, it is not possible to update references in those parts, to sections that will be included in later, as yet undrafted, parts. Such references are amended to make clear which code they refer to, but are otherwise left alone. As we progress through drafting of the Environment Code, the staff will return to earlier parts and conform these dangling cross-references.

In this draft, sections which contain references to sections in later parts of the Air Resources Division have been identified in staff notes. See, e.g., proposed Section 30002 & Comment.

Respectfully submitted,

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DIVISION 4. AIR RESOURCES

PART 1 . GENERAL PROVISIONS AND DEFINITIONS

CHAPTER 1. GENERAL PROVISIONS

§ 30000. Legislative findings and declaration

30000. The Legislature finds and declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California.

Comment. Section 30000 continues former Health and Safety Code Section 39000 without change.

§ 30001. Legislative declaration

30001. The Legislature, therefore, declares that this public interest shall be safeguarded by an intensive, coordinated state, regional, and local effort to protect and enhance the ambient air quality of the state. Since air pollution knows no political boundaries, the Legislature declares that a regional approach to the problem should be encouraged whenever possible and, to this end, the state is divided into air basins. The state should provide incentives for such regional strategies, respecting, when necessary, existing political boundaries.

Comment. Section 30001 continues former Health and Safety Code Section 39001 without change.

§ 30002. Control of air pollution from nonvehicular and vehicular sources

30002. Local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources. The control of vehicular sources, except as otherwise provided in this division, shall be the responsibility of the State Air Resources Board. Except as otherwise provided in this division, including, but not limited to, Sections 41809, 41810, and 41904 of the Health and Safety Code, local and regional authorities may establish stricter standards than those set by law or by the state board for nonvehicular sources. However, the state board shall, after holding public hearings as required in this division, undertake control activities in any area wherein it determines that the local or regional authority has failed to meet the responsibilities given to it by this division or by any other provision of law.

Comment. Section 30002 continues former Health and Safety Code Section 39002 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, these references have not been changed. They will be corrected after a complete draft of this division has been prepared.

§ 30003. Responsible agency

30003. The State Air Resources Board is the state agency charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution, and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the state.

Comment. Section 30003 continues former Health and Safety Code Section 39003 without change.

☞ **Staff Note.** Health and Safety Code Sections 39004 and 39005 govern the effect of reenactment of Division 26 of the Health and Safety Code during the 1975-76 Regular Session of the Legislature. These provisions are obsolete and are omitted. The effect of enactment of this division is governed by proposed Environment Code Section 2 (continuation of existing law).

§ 30004. Punishment of violations

30004. (a) If a violation is punishable under this division as a violation of either (1) a permit condition or (2) an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the violation may be punished as a violation of either (1) or (2), but not both.

(b) This language is modeled on Penal Code Section 654, for purposes of civil and criminal air pollution violations.

Comment. Section 30004 codifies Section 11 of 1992 Cal. Stat. ch. 1252.

CHAPTER 2. DEFINITIONS

§ 30100. Application of definitions

30100. Unless the context requires otherwise, a definition set forth in this chapter shall govern the construction of this division, unless and until rules and regulations are adopted by the state board pursuant to Section 31202 which revise such definition.

Comment. Section 30100 continues former Health and Safety Code Section 39010 without substantive change.

§ 30105. “Acid deposition”

30105. “Acid deposition” means the wet or dry deposition of acid chemical compounds from the atmosphere.

Comment. Section 30105 continues former Health and Safety Code Section 39010.5 without change.

§ 30110. “Acid deposition precursor”

30110. “Acid deposition precursor” means an air contaminant which may be transformed to an acid gas or particle in the atmosphere.

Comment. Section 30110 continues former Health and Safety Code Section 39010.6 without change.

§ 30115. “Agricultural burning”

30115. (a) “Agricultural burning” means open outdoor fires used in agricultural operations in the growing of crops or raising of fowl or animals, or open outdoor fires

used in forest management, range improvement, or the improvement of land for wildlife and game habitat, or disease or pest prevention.

(b) “Agricultural burning” also means open outdoor fires used in the operation or maintenance of a system for the delivery of water for the purposes specified in subdivision (a).

(c) “Agricultural burning” also means open outdoor fires used in wildland vegetation management burning. Wildland vegetation management burning is the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral, trees, grass, or standing brush. Prescribed burning is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may also include natural or accidental ignition.

Comment. Section 30115 continues former Health and Safety Code Section 39011 without change.

§ 30120. “Air basin”

30120. “Air basin” means an area of the state designated by the state board pursuant to subdivision (a) of Section 31250 of the Health and Safety Code.

Comment. Section 30120 continues former Health and Safety Code Section 39012 without substantive change.

§ 30125. “Air contaminant”

30125. “Air contaminant” means any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof.

Comment. Section 30125 continues the definition of “air contaminant” provided in former Health and Safety Code Section 39013 without substantive change. The definition of “air pollutant” provided in former Health and Safety Code Section 39013 is continued in Section 30130.

§ 30130. “Air pollutant”

30130. “Air pollutant” means air contaminant.

Comment. Section 30130 is new. It is consistent with former Health and Safety Code Section 39013. See Section 30130 (“air contaminant”).

§ 30135. “Ambient air quality standards”

30135. “Ambient air quality standards” means specified concentrations and durations of air pollutants which reflect the relationship between the intensity and composition of air pollution to undesirable effects established by the state board or, where applicable, by the federal government.

Comment. Section 30135 continues former Health and Safety Code Section 39014 without change.

§ 30140. “Bay district”

30140. “Bay district” means the Bay Area Air Quality Management District continued in existence pursuant to Chapter 4 (commencing with Section 40200) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30140 continues former Health and Safety Code Section 39015 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30145. “Bay district board”

30145. “Bay district board” means the governing body of the bay district.

Comment. Section 30145 continues former Health and Safety Code Section 39016 without change.

§ 30150. “Bureau”

30150. “Bureau” means the Bureau of Automotive Repair in the Department of Consumer Affairs.

Comment. Section 30150 continues former Health and Safety Code Section 39016.5 without change.

☞ **Staff Note.** A number of Health and Safety Code relating to vehicle smog check procedures were added by Chapter 1192 of the Statutes of 1994. See Health & Safety Code §§ 39016.5, 39027.5, 39051.7, 40925, 43200.5, 43201, 43646, 43706-43800, 44001, 44011, 44012, 44013, 44013.5, 44015, 44037.1, 44062.1, 44062.2, 44250-44257. These provisions are subject to a somewhat complex set of operation contingencies. Under Section 32 of Chapter 1192, these sections do not become operative until the Department of Consumer Affairs, the San Diego County Air Pollution Control District, and the Ventura County Air Pollution Control District, have found certain facts to be true and reported those findings to the Secretary of State.

The staff is investigating whether the events described in the operative date contingency have occurred. This is relevant for three reasons:

(1) **Possible obsolescence of provisions.** The pilot project may have never become operative because of some irremediable failure of the contingencies. If so, then these provisions are obsolete and should probably be repealed.

(2) **Sunset provisions contingent on operative date contingency.** Most of the Health and Safety Code sections listed above include sunset provisions, providing that the section becomes inoperative five years after becoming operative pursuant to Section 32 (and are repealed on the next January 1st after becoming inoperative). Therefore, in order to determine when the sections become inoperative and are repealed, it is necessary to determine when they became operative.

(3) **Alternatives to repealed sections.** There are alternative sections that are intended to replace some of those sections that become inoperative and are repealed after five years of operation. These sections do not become operative until five years after the events described in Section 32 occur.

§ 30155. “Bus”

30155. “Bus” has the same meaning as defined in Section 233 of the Vehicle Code.

Comment. Section 30155 continues former Health and Safety Code Section 39017 without change.

§ 30160. “Certification”

30160. “Certification” means a finding by the state board that a motor vehicle, motor vehicle engine, or motor vehicle pollution control device has satisfied the criteria adopted by the state board for the control of specified air contaminants from vehicular sources.

Comment. Section 30160 continues former Health and Safety Code Section 39018 without change.

§ 30165. “Certified device”

30165. “Certified device” means a motor vehicle pollution control device with a certification, and includes a motor vehicle pollution control device previously accredited or approved by the state board or by the Motor Vehicle Pollution Control Board.

The term “accredited” or “approved” may continue to be used with respect to such devices previously accredited or approved.

Comment. Section 30165 continues former Health and Safety Code Section 39019 without change.

§ 30170. “Cogeneration technology”

30170. “Cogeneration technology” has the same meaning as defined in Section 25134 of the Public Resources Code.

Comment. Section 30170 continues former Health and Safety Code Section 39019.5 without change.

§ 30175. “Cogeneration technology project”

30175. “Cogeneration technology project” shall not include existing equipment owned or operated by the applicant or host industry which is not modified as a result of utilizing cogeneration technology.

Comment. Section 30175 continues former Health and Safety Code Section 39019.6 without change.

§ 30180. “Combustible or flammable solid waste”

30180. “Combustible or flammable solid waste” means any garbage, rubbish, trash, rags, paper, boxes, crates, excelsior, ashes, offal, carcass of a dead animal, or any other combustible or flammable refuse matter which is in a solid form.

Comment. Section 30180 continues former Health and Safety Code Section 39020 without change.

§ 30185. “Commercial vehicle”

30185. “Commercial vehicle” has the same meaning as defined in Section 260 of the Vehicle Code.

Comment. Section 30185 continues former Health and Safety Code Section 39021 without change.

§ 30190. “Components of emissions control systems”

30190. “Components of emissions control systems” are those parts included in the state board’s “Emissions Warranty Parts List,” dated December 14, 1978, referenced in subdivision (c) of Section 2036 of Title 13 of the California Administrative Code.

Comment. Section 30190 continues former Health and Safety Code Section 39021.5 without change.

§ 30195. “County district”

30195. “County district” means a district continued in existence pursuant to Chapter 2 (commencing with Section 40100) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30195 continues former Health and Safety Code Section 39022 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30200. “County district board”

30200. “County district board” means the governing body of a county district.

Comment. Section 30200 continues former Health and Safety Code Section 39023 without change.

§ 30205. “Crankcase emissions”

30205. “Crankcase emissions” means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine. Crankcase gases which are conducted to the engine intake or exhaust systems are not included in the definition of crankcase emissions, but are defined as exhaust emissions.

Comment. Section 30205 continues former Health and Safety Code Section 39024 without change.

§ 30210. “Department”

30210. “Department” means the Department of Consumer Affairs.

Comment. Section 30210 continues former Health and Safety Code Section 39024.5 without change.

§ 30215. “Direct import vehicle”

30215. “Direct import vehicle” means any light-duty motor vehicle manufactured outside of the United States which was not intended by the manufacturer for sale in the United States and which was not certified by the state board pursuant to Article 1 (commencing with Section 43100) of Chapter 2 of Part 5 of Division 26 of the Health and Safety Code.

Comment. Section 30215 continues former Health and Safety Code Section 39024.6 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30220. “District”

30220. “District” means an air pollution control district or an air quality management district created or continued in existence pursuant to provisions of Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code.

Comment. Section 30220 continues former Health and Safety Code Section 39025 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30225. “District board”

30225. “District board” means the governing body of a district.

Comment. Section 30225 continues former Health and Safety Code Section 39026 without change.

§ 30230. “Elderly low-income person”

30230. “Elderly low-income person” means an individual over 62 years of age who resides in a household wherein the combined adjusted gross income, as defined in Section 17072 of the Revenue and Taxation Code, of all members of the household, including such individual over 62 years of age, was less than seven thousand five hundred dollars (\$7,500) for the previous calendar year.

Comment. Section 30230 continues former Health and Safety Code Section 39026.5 without change.

§ 30235. “Emissions-capped trading program”

30235. “Emission-capped trading program” means a trading program with capped emissions.

Comment. Section 30235 is new. It is consistent with former Health and Safety Code Section 39053.6. See Section 30465 (“trading program with capped emissions”).

§ 30240. “Emission standards”

30240. “Emission standards” means specified limitations on the discharge of air contaminants into the atmosphere.

Comment. Section 30240 continues former Health and Safety Code Section 39027 without change.

§ 30245. “Emissions retrofit device”

30245. (a) “Emissions retrofit device” means an exhaust device certified pursuant to Section 43630 of the Health and Safety Code or approved for use pursuant to Section 27156 of the Vehicle Code which renders a modified vehicle a low-emission motor vehicle, as defined by Section 43800 of the Health and Safety Code.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of Chapter 1192 of the Statutes of 1994, and on the January 1 following that date is repealed.

Comment. Section 30245 continues former Health and Safety Code Section 39027.5 without substantive change.

☞ **Staff Notes. (1)** This is one of the sections discussed in the staff note to proposed Section 30150. See that note.

(2) This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30250. “Exhaust device”

30250. “Exhaust device” means a motor vehicle pollution control device to reduce exhaust emissions.

Comment. Section 30250 continues former Health and Safety Code Section 39028 without change.

§ 30255. “Exhaust emissions”

30255. “Exhaust emissions” means substances emitted to the atmosphere from any opening downstream from the exhaust port of a motor vehicle engine.

Comment. Section 30255 continues former Health and Safety Code Section 39029 without change.

§ 30260. “Flue”

30260. “Flue” means any duct or passage for air, gases, or the like, such as a stack or chimney.

Comment. Section 30260 continues former Health and Safety Code Section 39030 without change.

§ 30265. “Fuel evaporative loss emissions”

30265. “Fuel evaporative loss emissions” means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

Comment. Section 30265 continues former Health and Safety Code Section 39031 without change.

§ 30270. “Fuel systems”

30270. “Fuel system” means the combination of fuel tank, fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

Comment. Section 30270 continues former Health and Safety Code Section 39032 without change.

§ 30275. “Gross polluter”

30275. “Gross polluter” means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions as established by the department in consultation with the state board.

Comment. Section 30275 continues former Health and Safety Code Section 39032.5 without change.

§ 30280. “Heavy-duty”

30280. “Heavy-duty” means having a manufacturer’s maximum gross vehicle weight rating of 6,001 or more pounds.

Comment. Section 30280 continues former Health and Safety Code Section 39033 without change.

§ 30285. “Implement of husbandry”

30285. “Implement of husbandry” has the same meaning as defined in Chapter 1 (commencing with Section 36000), Division 16 of the Vehicle Code.

Comment. Section 30285 continues former Health and Safety Code Section 39034 without change.

§ 30290. “Light-duty”

30290. “Light-duty” means having a manufacturer’s maximum gross vehicle weight rating of under 6,001 pounds.

Comment. Section 30290 continues former Health and Safety Code Section 39035 without change.

§ 30295. “Local or regional authority”

30295. “Local or regional authority” means the governing body of any city, county, or district.

Comment. Section 30295 continues former Health and Safety Code Section 39037 without change.

§ 30300. “Low-emission motor vehicle”

30300. “Low-emission motor vehicle” means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

(a) Is capable of operating on methanol, as determined by the state board, and will have an adverse impact on ambient ozone air quality not greater than a vehicle which meets the requirements of subdivision (c).

(b) Is capable of operating on any available fuel other than gasoline or diesel and, in the determination of the state board, will have an adverse impact on ambient ozone air quality not greater than a vehicle operating on methanol.

(c) Operates exclusively on gasoline and is certified to meet a hydrocarbon exhaust emission standard which is at least twice as stringent as otherwise applicable to gasoline vehicles of the same year and class.

Comment. Section 30300 continues former Health and Safety Code Section 39037.05 without change.

§ 30305. “Marine vessel”

30305. “Marine vessel” means any tugboat, tanker, freighter, passenger ship, barge, or other boat, ship, or watercraft, except those used primarily for recreation.

Comment. Section 30305 continues former Health and Safety Code Section 39037.1 without change.

§ 30310. “Medium duty”

30310. “Medium duty” means a heavy-duty vehicle having a manufacturer’s gross vehicle weight rating under a limit established by the state board.

Comment. Section 30310 continues former Health and Safety Code Section 39037.5 without change.

§ 30315. “Model year”

30315. “Model year” means the manufacturer’s annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year.

In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

Comment. Section 30315 continues former Health and Safety Code Section 39038 without change.

§ 30320. “Mojave Desert district”

30320. “Mojave Desert district” means the Mojave Desert Air Quality Management District created pursuant to Chapter 13 (commencing with Section 41200) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30320 continues former Health and Safety Code Section 39038.3 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30325. “Mojave Desert district board”

30325. “Mojave Desert district board” means the governing board of the Mojave Desert district.

Comment. Section 30325 continues former Health and Safety Code Section 39038.5 without change.

§ 30330. “Motor vehicle”

30330. “Motor vehicle” has the same meaning as defined in Section 415 of the Vehicle Code.

Comment. Section 30330 continues former Health and Safety Code Section 39039 without change.

§ 30335. “Motor vehicle pollution control device”

30335. “Motor vehicle pollution control device” means equipment designed for installation on a motor vehicle for the purpose of reducing the air contaminants emitted from the vehicle, or a system or engine modification on a motor vehicle which causes a reduction of air contaminants emitted from the vehicle.

Comment. Section 30335 continues former Health and Safety Code Section 39040 without change.

§ 30340. “Motorcycle”

30340. “Motorcycle” has the same meaning as defined in Section 400 of the Vehicle Code.

Comment. Section 30340 continues former Health and Safety Code Section 39041 without change.

§ 30345. “New motor vehicle”

30345. “New motor vehicle” means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser.

Comment. Section 30345 continues former Health and Safety Code Section 39042 without change.

§ 30350. “New motor vehicle engine”

30350. “New motor vehicle engine” means a new engine in a motor vehicle.

Comment. Section 30350 continues former Health and Safety Code Section 39042.5 without change.

§ 30355. “Nonvehicular sources”

30355. “Nonvehicular sources” means all sources of air contaminants, including the loading of fuels into vehicles, except vehicular sources.

Comment. Section 30355 continues former Health and Safety Code Section 39043 without change.

§ 30360. “Obscurant”

30360. “Obscurant” means fog oil released into the atmosphere during military exercises which produces a smoke screen designed to eliminate the detection of persons or objects by visual or electronic means of observation within a localized area.

Comment. Section 30360 continues former Health and Safety Code Section 39043.5 without change.

§ 30365. “Open outdoor fire”

30365. “Open outdoor fire” means any combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue.

Comment. Section 30365 continues former Health and Safety Code Section 39044 without change.

§ 30370. “Orchard or citrus grove heater”

30370. “Orchard or citrus grove heater” means any article, machine, equipment, or other contrivance, burning any type of fuel or material capable of emitting air contaminants, used, or capable of being used, for the purpose of giving protection from frost damage.

Comment. Section 30370 continues former Health and Safety Code Section 39045 without change.

§ 30375. “Passenger vehicle”

30375. “Passenger vehicle” has the same meaning as defined in Section 465 of the Vehicle Code.

Comment. Section 30375 continues former Health and Safety Code Section 39046 without change.

§ 30380. “Person”

30380. “Person” includes all of the following:

(a) A natural person, firm, association, organization, partnership, business trust, corporation, or company.

(b) Any state or local governmental agency or public district, or any officer or employee thereof. However, no state or local governmental agency or public district, or any officer or employee thereof, shall be criminally liable or responsible under the provisions of Part 4 (commencing with Section 41500) of the Health and Safety Code for any acts done by such governmental agency, or public district, in the performance of its functions or by such officers or employees in the performance of their duties.

(c) The United States or its agencies, to the extent authorized by federal law.

Comment. Section 30380 continues former Health and Safety Code Section 39047 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30385. “Qualifying facility”

30385. “Qualifying facility” means a qualifying small power production facility as defined in Section 228.5 of the Public Utilities Code.

Comment. Section 30385 continues former Health and Safety Code Section 39047.5 without change.

§ 30390. “Racing vehicle”

30390. “Racing vehicle” means a competition vehicle not used on public highways.

Comment. Section 30390 continues former Health and Safety Code Section 39048 without change.

§ 30395. “Regional district”

30395. “Regional district” means a district created pursuant to Chapter 5 (commencing with Section 40300) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30395 continues former Health and Safety Code Section 39049 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30400. “Regional district board”

30400. “Regional district board” means the governing body of a regional district.

Comment. Section 30400 continues former Health and Safety Code Section 39050 without change.

§ 30405. “Resource recovery project”

30405. “Resource recovery project” means a project which converts municipal wastes, agricultural wastes, forest wastes, landfill gas, or digester gas in a manner so as to produce energy as a byproduct in the air basin in which they are produced.

Comment. Section 30405 continues former Health and Safety Code Section 39050.5 without change.

§ 30410. “Sacramento district”

30410. “Sacramento district” means the Sacramento Metropolitan Air Quality Management District created pursuant to Chapter 10 (commencing with Section 40950) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30410 continues former Health and Safety Code Section 39050.7 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30415. “Sacramento district board”

30415. “Sacramento district board” means the governing body of the Sacramento district.

Comment. Section 30415 continues former Health and Safety Code Section 39050.8 without change.

§ 30420. “Schedule of increments of progress”

30420. “Schedule of increments of progress” means a statement of dates when various steps are to be taken to bring a source of air contaminants into compliance with emission standards and shall include, to the extent feasible, the following:

(a) The date of submittal of the final plan for the control of emissions of air contaminants from that source to the appropriate district.

(b) The date by which contracts for emission control systems or process modifications will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification.

(c) The date of initiation of onsite construction or installation of emission control equipment or process change.

(d) The date by which onsite construction or installation of emission control equipment or process modification is to be completed.

(e) The date by which final compliance is to be achieved.

(f) Such other dates by which other appropriate and necessary steps shall be taken to permit close and effective supervision of progress toward timely compliance.

Comment. Section 30420 continues former Health and Safety Code Section 39051 without change.

§ 30425. “Schoolbus”

30425. “Schoolbus” means a heavy-duty motor vehicle exclusively designed and built for the transportation of any school, college, or university student to or from educational facilities or activities.

Comment. Section 30425 continues former Health and Safety Code Section 39051.5 without change.

§ 30430. “Smog index”

30430. (a) “Smog index” means the index number assigned to a motor vehicle by the state board pursuant to Section 44251 of the Health and Safety Code to indicate the effect of the use of that vehicle on ozone levels in ozone nonattainment areas.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of Chapter 1192 of the Statutes of 1994, and on the January 1 following that date is repealed.

Comment. Section 30430 continues former Health and Safety Code Section 39051.7 without substantive change.

☞ **Staff Note. (1)** This is one of the sections discussed in the staff note to proposed Section 30150. See that note.

(2) This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30435. “Solid waste dump”

30435. “Solid waste dump” means any accumulation for the purpose of disposal of any solid waste.

Comment. Section 30435 continues former Health and Safety Code Section 39052 without change.

§ 30440. “South coast district”

30440. “South coast district” means the South Coast Air Quality Management District created pursuant to Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30440 continues former Health and Safety Code Section 39052.5 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30445. “South coast district board”

30445. “South coast district board” means the governing body of the south coast district.

Comment. Section 30445 continues former Health and Safety Code Section 39052.6 without change.

§ 30450. “State Board”

30450. “State Board” means the State Air Resources Board.

Comment. Section 30450 continues former Health and Safety Code Section 39053 without change.

§ 30455. “Title V”

30455. “Title V” means Title V of the federal Clean Air Act (42 U.S.C. Sec. 7661 et seq.).

Comment. Section 30455 continues former Health and Safety Code Section 39053.3 without change.

§ 30460. “Title V source”

30460. “Title V source” means only a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act (42 U.S.C. Secs. 7661 to 7661f, inclusive) and the federal regulations adopted pursuant to Title V.

Comment. Section 30460 continues former Health and Safety Code Section 39053.5 without change.

§ 30465. “Trading program with capped emissions”

30465. “Trading program with capped emissions” means a market-based incentive trading program adopted pursuant to Section 31451 that allows sources to comply with an emission cap or limit by acquiring marketable emission credits.

Comment. Section 30465 continues the definition of “trading program with capped emissions” provided in former Health and Safety Code Section 39053.6 without substantive change. The definition of “emissions capped trading program” is continued in Section 30235.

§ 30470. “Truck”

30470. “Truck” means a motor truck as defined in Section 410 of the Vehicle Code.

Comment. Section 30470 continues former Health and Safety Code Section 39054 without change.

§ 30475. “Truck tractor”

30475. “Truck tractor” has the same meaning as defined in Section 655 of the Vehicle Code.

Comment. Section 30475 continues former Health and Safety Code Section 39055 without change.

§ 30480. “Ultimate purchaser”

30480. “Ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

Comment. Section 30480 continues former Health and Safety Code Section 39055.5 without change.

§ 30485. “Unified district”

30485. “Unified district” means a district created or continued in existence pursuant to Chapter 3 (commencing with Section 40150) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 30485 continues former Health and Safety Code Section 39056 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30490. “Unified district board”

30490. “Unified district board” means the governing body of a unified district.

Comment. Section 30490 continues former Health and Safety Code Section 39057 without change.

§ 30495. “Used motor vehicle”

30495. “Used motor vehicle” means any motor vehicle which is not a new motor vehicle.

Comment. Section 30495 continues former Health and Safety Code Section 39058 without change.

§ 30500. “Vehicle”

30500. “Vehicle” has the same meaning as defined in Section 670 of the Vehicle Code.

Comment. Section 30500 continues former Health and Safety Code Section 39059 without change.

§ 30505. “Vehicular sources”

30505. “Vehicular sources” means those sources of air contaminants emitted from motor vehicles.

Comment. Section 30505 continues former Health and Safety Code Section 39060 without change.

CHAPTER 3. MINOR VIOLATIONS

Article 1. General Provisions

§ 30600. Findings, declarations, and intent

30600. (a) The Legislature hereby finds and declares that the purpose of this chapter is to establish an enforcement policy for violations of this division that the enforcement agency finds are minor when the danger they pose to, or the potential that they have for endangering, human health, safety, or welfare or the environment are taken into account.

(b) It is the intent of the Legislature in enacting this chapter to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the districts, and the regulated community while maintaining protection of human health and safety and the environment.

Comment. Section 30600 continues subdivisions (a) and (b) of former Health and Safety Code Section 39150 without change.

§ 30601. Report

30601. On or before January 1, 2000, the state board shall report to the Legislature on actions taken by the state board and the districts to implement this chapter and the results of that implementation. Each district shall provide the state board with the information that the state board requests to determine the degree to which the purposes described in subdivision (a) of Section 30600 have been achieved.

Comment. Section 30601 continues subdivision (a) of former Health and Safety Code Section 39153 without substantive change.

§ 30602. Duration of chapter

30602. This chapter shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

Comment. Section 30602 continues subdivision (b) of former Health and Safety Code Section 39153 without change.

Article 2. Classification and Exclusions

§ 30650. Classification of minor violations

30650. The state board and each district shall, for their respective jurisdictions, implement this chapter by adopting a regulation or a rule that classifies the types of violations of this division, or of the regulations, rules, standards, orders, permit conditions, or other requirements adopted pursuant to this division, that the state board or the district finds are minor violations in accordance with Section 30651.

Comment. Section 30650 continues subdivision (c) of former Health and Safety Code Section 39150 without substantive change.

§ 30651. Classification criteria

30651. In classifying the types of violations that are minor violations, the state board or the district shall consider all of the following factors:

- (a) The magnitude of the violation.
- (b) The scope of the violation.
- (c) The severity of the violation.
- (d) The degree to which a violation puts human health, safety, or welfare or the environment into jeopardy.
- (e) The degree to which a violation could contribute to the failure to accomplish an important goal or program objective as established by this division.
- (f) The degree to which a violation may make it difficult to determine if the violator is in compliance with other requirements of this division.

Comment. Section 30651 continues subdivision (d) of former Health and Safety Code Section 39150 without change.

§ 30652. Classification criteria

30652. (a) For purposes of this chapter, a minor violation of this division shall not include any of the following:

- (1) Any knowing, willful, or intentional violation of this division.
- (2) Any violation of this division that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.
- (3) Any violation that is a chronic violation or that is committed by a recalcitrant violator.

(b) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of paragraph (3) of subdivision (a), the state board or district or an authorized or designated officer shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division or the requirements adopted pursuant to this division.

Comment. Section 30652 continues subdivisions (e) and (f) of former Health and Safety Code Section 39150 without change.

Article 3. Notice to Comply

§ 30700. “Notice to comply”

30700. For purposes of this chapter, “notice to comply” means a written method of alleging a minor violation that is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection by an authorized representative of the state board or district or an authorized or designated officer. If testing is required by the state board or district or an authorized or designated officer to determine compliance, and the testing cannot be conducted during the course of the inspection, the representative of the state board or the district or an authorized or designated officer shall have a reasonable period of time to conduct the required testing. If, after the test results are available, the representative of the state board or district or an authorized or designated officer determines that the issuance of a notice to comply is warranted, the representative or officer shall immediately notify the facility owner or operator in writing.

(b) A copy of the notice to comply is presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written. If offsite testing is required pursuant to subdivision (a), a copy of the notice to comply may be mailed to the owner or operator of the facility.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the requirement cited by the state board’s or district’s representative or an authorized or designated officer may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (a) of Section 30704 with regard to the possible reinspection of the facility.

Comment. Section 30700 continues former Health and Safety Code Section 39151 without substantive change.

§ 30701. Issuance of notice to comply

30701. (a) An authorized representative of the state board or district or an authorized or designated officer, who, in the course of conducting an inspection, detects a minor violation shall issue a notice to comply before leaving the site at which the minor

violation is alleged to have occurred if the authorized representative finds that a notice to comply is warranted.

(b) A single notice to comply shall be issued for all minor violations cited during the same inspection and the notice to comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.

(c) A notice to comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report, but the person shall not be subject to any further action by the state board's or district's representative or an authorized or designated officer.

Comment. Section 30701 continues subdivisions (a), (c), and (d) of former Health and Safety Code Section 39152 without change.

§ 30702. Principal means of enforcement

30702. Except as otherwise provided in Section 30750, a notice to comply shall be the only means by which the state board's or district's representative or an authorized or designated officer shall cite a minor violation. The state board's or district's representative or an authorized or designated officer shall not take any other enforcement action specified in this division to enforce the minor violation against a person who has received a notice to comply if the person is in compliance with this chapter.

Comment. Section 30702 continues subdivision (e) of former Health and Safety Code Section 39152 without substantive change.

☞ **Staff Note.** Health and Safety Code Section 39152 has been broken up into its constituent parts and reorganized. Some of its provisions are in this article, the remainder are in Article 4. Section 39152 contains a number of self-references (e.g. "compliance with this section," "nothing in this section"). These references need to be adjusted to reflect the disassembly and reorganization of the section. The simplest approach, taken here, is to generalize the references, so that they now refer to the chapter, rather than the section (e.g. "compliance with this chapter," "nothing in this chapter"). The staff believes that this continues the substance of these references without change.

§ 30703. Required compliance

30703. A person who receives a notice to comply pursuant to subdivision (a) of Section 30701 shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply and return it to the state board's or district's representative or an authorized or designated officer, stating that the person has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this division pursuant to Section 42400.2 or 42402.2 of the Health and Safety Code.

Comment. Section 30703 continues subdivision (b) of former Health and Safety Code Section 39152 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 30704. Proof of compliance

30704. (a) A notice to comply issued to a person pursuant to this chapter shall contain a statement that the inspected facility may be subject to reinspection at any time. Nothing in this chapter shall be construed as preventing the reinspection of a facility to ensure compliance or to ensure that minor violations cited in a notice to comply have been corrected.

(b) Nothing in this chapter shall be construed as preventing the state board or district or an authorized or designated officer, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

Comment. Section 30704 continues subdivisions (h) and (i) of former Health and Safety Code Section 39152 without substantive change.

☞ **Staff Note.** References in this section to “this section” were changed to refer to “this chapter.” See the staff note to Section 30702.

§ 30705. Appeal

30705. If a person who receives a notice to comply pursuant to subdivision (a) of Section 30701 disagrees with one or more of the alleged violations cited in the notice to comply, the person shall give written notice of appeal to the state board or district, which shall develop a process for reviewing and determining the disposition of the appeal.

Comment. Section 30705 continues subdivision (f) of former Health and Safety Code Section 39152 without substantive change.

Article 4. Enforcement Alternatives

§ 30750. Immediate enforcement to prevent harm

30750. Notwithstanding any other provision of this chapter, if a person fails to comply with a notice to comply within the prescribed period, or if the state board or district or an authorized or designated officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the state board or district or an authorized or designated officer may take any needed enforcement action authorized by this division.

Comment. Section 30750 continues subdivision (g) of former Health and Safety Code Section 39152 without substantive change.

☞ **Staff Note.** References in this section to “this section” were changed to refer to “this chapter.” See the staff note to Section 30702.

§ 30751. Civil penalties

30751. Notwithstanding any other provision of this chapter, if the state board or district or an authorized or designated officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this division is warranted or required by federal law, in addition to issuance of a notice to comply, the state board or district or an authorized or designated officer shall assess a civil penalty in accordance with this division, if the state board or district or an authorized or designated officer makes written findings that set forth the basis for the determination of the state board or district.

Comment. Section 30751 continues subdivision (k) of former Health and Safety Code Section 39152 without substantive change.

☞ **Staff Note.** A reference in this section to “this section” was changed to refer to “this chapter.” See the staff note to Section 30702.

§ 30752. Enforcement by other entities

30752. Nothing in this chapter restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this chapter prevents the state board or district, or any representative of the state board or district, from cooperating with, or participating in, such a proceeding.

Comment. Section 30752 continues subdivision (j) of former Health and Safety Code Section 39152 without change.

☞ **Staff Note.** References in this section to “this section” were changed to refer to “this chapter.” See the staff note to Section 30702.

PART 2. STATE AIR RESOURCES BOARD

CHAPTER 1. GENERAL PROVISIONS

§ 31000. Legislative intent

31000. It is the intent of the Legislature that the State Air Resources Board shall have the responsibility, except as otherwise provided in this division, for control of emissions from motor vehicles and shall coordinate, encourage, and review the efforts of all levels of government as they affect air quality.

Comment. Section 31000 continues former Health and Safety Code Section 39500 without change.

CHAPTER 2. ADMINISTRATION

§ 31100. Composition of Board

31100. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 11 members.

(b) The members shall be appointed by the Governor, with the consent of the Senate, on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems. Six members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) Two members shall be public members.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.

(c) Five members shall be board members from districts who shall reflect the qualitative requirements of subdivision (b) to the extent practicable. Of these five members, one shall be a board member from the south coast district, one shall be a board member from the bay district, one shall be a board member from the San Joaquin Valley Unified Air Pollution Control District or, if the unified district is abolished, from the San Joaquin Valley Air Quality Management District if created pursuant to Section 41101 of the Health and Safety Code, one shall be a board member from the San Diego County Air Pollution Control District, and one shall be a board member of any other district.

(d) Any vacancy shall be filled by the Governor within 30 days of the date on which it occurs. If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.

Comment. Section 31100 continues subdivisions (a) to (d), inclusive, of former Health and Safety Code Section 39510 without substantive change. Former subdivision (f), providing that former Section 39510 became operative on January 1, 1994, is obsolete and has not been continued.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31101. Independent Judgment

31101. While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. No member of the state board shall be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that no member of the state board who is also a member of a district board shall participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive, of the Health and Safety Code.

Comment. Section 31101 continues subdivision (e) of former Health and Safety Code Section 39510 without substantive change. Former subdivision (f), providing that former Section 39510 became operative on January 1, 1994, is obsolete and has not been continued.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31102. Chairperson

31102. (a) The Governor shall appoint the chairperson, who shall serve at the pleasure of the Governor, from among the members of the state board. The chairperson shall serve as the Governor's chief air quality policy spokesperson.

(b) The chairperson shall serve full time.

Comment. Section 31102 continues former Health and Safety Code Section 39511 without change. Enactment of this section codifies Section 131 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 31103. Salary

31103. Each member of the state board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 31103 continues former Health and Safety Code Section 39512 without change.

§ 31104. Reimbursement for expenses

31104. (a) With respect to the members appointed pursuant to subdivision (c) of Section 31100, those members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for expenses is not otherwise provided or payable by another public agency or agencies. Each elected public official member of the state board shall receive one hundred dollars (\$100) for each day, or portion thereof, but not to exceed one thousand dollars (\$1,000) in any month, attending meetings of the state board or committees thereof, or upon authorization of the state board while on official business of the state board.

(b) Reimbursements made pursuant to subdivision (a) shall be made as follows:

(1) A member appointed from a named district, pursuant to subdivision (c) of Section 31100, shall be reimbursed by the district from which the person qualified for membership.

(2) The member appointed as a board member of any district, pursuant to subdivision (c) of Section 31100, shall be reimbursed by the state board.

Comment. Section 31104 continues former Health and Safety Code Section 39512.5 without substantive change.

☞ **Staff Note.** Subdivision (b) of Health and Safety Code Section 39512.5 contains an obsolete cross-reference to paragraph (2) of subdivision (c) of Section 39510. This section no longer exists. Subdivision (b) of proposed Section 31104 has been rewritten to continue the original effect of the cross-reference — to make clear that the state board reimburses the “at large” member chosen from the districts.

§ 31105. Meetings

31105. The state board shall hold regular meetings at least twice a month. Special meetings may be called by the chairman or upon the request of a majority of the members. Each member of the state board shall receive that member’s actual necessary traveling expenses incurred in the performance of official duties.

Comment. Section 31105 continues former Health and Safety Code Section 39513 without substantive change. Note that the last sentence of former Health and Safety Code Section 39513, referring to an obsolete provision conditioning the salary of board members on the number of hours worked, is not continued.

§ 31106. State department

31106. The provisions of Chapter 2 (commencing with Section 11150), Part 1, Division 3, Title 2 of the Government Code apply to the state board, and the state board is the head of a department within the meaning of the chapter.

Comment. Section 31106 continues former Health and Safety Code Section 39514 without change.

§ 31107. Executive officer

31107. (a) The state board shall appoint an executive officer who shall serve at the pleasure of the state board and, except as provided in subdivision (d), may delegate any duty to the executive officer which the state board deems appropriate.

(b) The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge, under the direction and control of the state board, the powers, duties, purposes, functions, and jurisdiction vested in the state board and delegated to the executive officer by the state board.

(c) The state board shall, upon the receipt of a petition from any affected member of the public, affected district, or designated air quality planning agency, hold a public hearing to review any action taken by the executive officer relating to any of the following:

(1) Making any order pursuant to Section 41507, 41602, or 41603 of the Health and Safety Code.

(2) Taking action pursuant to Section 41650, 41651, or 41652 of the Health and Safety Code.

(d) Any action taken by the executive officer pursuant to Section 40469 or Sections 41503 to 41505, inclusive, of the Health and Safety Code shall be subject to the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 31107 continues former Health and Safety Code Section 39515 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31108. Delegation of duties by board

31108. (a) Any power, duty, purpose, function, or jurisdiction which the state board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the state board, by affirmative vote recorded in the minutes of the state board, specifically has reserved the same for the state board's own action.

(b) The executive officer may redelegate to the executive officer's subordinates unless, by state board rule or express provision of law, the executive officer is specifically required to act personally.

Comment. Section 31108 continues former Health and Safety Code Section 39516 without substantive change.

§ 31109. Notice

31109. The district shall be given notice and the opportunity to act before any rule or regulation is adopted by the state board for the district pursuant to Section 41502 of the Health and Safety Code.

Comment. Section 31109 continues former Health and Safety Code Section 39517 without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

CHAPTER 3. POWERS AND DUTIES

Article 1. General Powers and Duties

§ 31200. Necessary acts

31200. The state board shall do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.

Comment. Section 31200 continues former Health and Safety Code Section 39600 without change.

§ 31201. Powers of State Board

31201. To carry out the purposes of this division, the state board may:

- (a) Provide any assistance to any district.
- (b) Require any district to provide requested information utilized in the normal operation of the district or required by a state or federal statute or regulation.
- (c) Hold public hearings.
- (d) May accept assistance, financial and otherwise, from any public entity.

Comment. Section 31201 continues former Health and Safety Code Section 39605 without change.

§ 31202. Regulations

31202. (a) The state board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.

(b) The state board, by rules and regulations, may revise the definitions of terms set forth in Chapter 2 (commencing with Section 30100) of Part 1 in order to conform those definitions to federal laws and rules and regulations.

(c) The standards, rules, and regulations adopted pursuant to this section shall, to the extent consistent with the responsibilities imposed under this division, be consistent with the state goal of providing a decent home and suitable living environment for every Californian.

Comment. Section 31202 continues former Health and Safety Code Section 39601 without change.

§ 31203. Federal law

31203. (a) The state board is designated the air pollution control agency for all purposes set forth in federal law.

(b) The state board is designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act (42 U.S.C., Sec. 7401, et seq.) and, to this end, shall coordinate the activities of all districts necessary to comply with that act.

(c) Notwithstanding any other provision of this division, the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act.

Comment. Section 31203 continues former Health and Safety Code Section 39602 without substantive change.

§ 31204. Contracts and appointments

31204. (a) The state board may do both of the following:

(1) Contract for technical advisory services and other services as may be necessary for the performance of its powers and duties.

(2) Appoint advisory groups and committees as it requires. Members of committees or advisory groups shall receive one hundred dollars (\$100) per day for each day they attend a meeting of the state board or meet pursuant to a request of the state board, plus actual and necessary travel expenses incurred while performing their duties.

(b) In appointing advisory groups and committees, the state board may appoint a number of persons qualified in various fields and disciplines. Persons appointed shall be kept informed of the issues before the state board and the work pending before the state board. When the state board desires the advice, in connection with a particular problem or problems, of any person so appointed, the chairperson of the state board may select that person to serve as a member of a working group or committee for the purpose of providing the advice. After the working group or committee has given its advice to the state board, it shall cease to function as a working group or committee. The financial remuneration specified in paragraph (2) of subdivision (a) shall be available to persons only during the time they are serving as members of a working group or committee at the request of the state board.

Comment. Section 31204 continues former Health and Safety Code Section 39603 without change.

§ 31205. Report

31205. (a) The state board shall submit to the Governor and the Legislature a biennial report on air quality conditions and trends statewide and on the status and effectiveness of state and local air quality programs.

(b) The report shall include, but not be limited to, all of the following:

(1) A review of air quality trends in each air basin over the most recent five-calendar-year period for which a complete data record is available.

(2) A statement of the number of violations of air quality standards which occurred in each air basin over the most recent two calendar years for which a complete data record is available, and a comparison of the number of violations to those in prior years.

(3) A listing of any changes in state ambient air quality standards adopted by the board over the previous two calendar years.

(4) A summary of the results of research projects concluded during the previous two years, the status of current research projects, and the conduct of the research program pursuant to Section 32003.

(5) A summary of any actions taken by the state board to assume the powers of districts under Section 32201.

(6) A summary of the effects of any significant federal actions over the previous two years which have affected state air quality or air quality programs.

(7) A summary of the status of the state implementation plan for achieving and maintaining ambient air quality standards.

(8) A summary of the state board's actions in the previous two calendar years to control toxic air pollutants pursuant to Chapter 4 (commencing with Section 31600).

(9) A summary of actions of the state board in controlling emissions from motor vehicles during the previous two-year period.

(10) A summary of significant actions taken by districts to control emissions from nonvehicular sources during the previous two-year period. This summary shall not include a district by district analysis for each district in the state, but shall include an overall analysis.

(11) A list of recommendations for legislation or administrative actions to resolve specific air quality problems in the state.

Comment. Section 31205 continues former Health and Safety Code Section 39604 without substantive change.

The reference, in subdivision (a), to the date on which the reporting requirement began (January 1, 1985), is obsolete and has not been continued.

Paragraph (9) of subdivision (b) of former Health and Safety Code Section 39604 is obsolete and is not continued. That paragraph referred to a report prepared pursuant to former Health and Safety Code Section 39909, which was repealed by operation of former Health and Safety Code Section 39911 on January 1, 1994. See 1988 Cal. Stat. ch. 1518, § 2.

§ 31206. Issuance of permits

31206. (a) The state board shall implement a program to assist districts to improve efficiencies in the issuance of permits pursuant to this division. The program shall be consistent with the requirements of Title V.

(b)(1) The program shall include a process, developed in coordination with the districts, for the state board to precertify simple, commonly used equipment and processes as being in compliance with applicable air quality rules and regulations, under conditions specified by the state board. The state board shall develop criteria and guidelines for precertification in coordination with the districts.

(2) The state board shall charge a reasonable fee for precertification, not to exceed the state board's estimated costs. Payment of the fee shall be a condition of precertification.

(3) Precertification shall not affect any existing authority of a district regarding permitting and compliance requirements. Precertification shall constitute a preliminary evaluation of the equipment or process, and a recommendation by the state board for permit conditions to be adopted by a district having jurisdiction over particular equipment or a particular process, that would allow district permitting staff to more quickly process permit applications for air pollution sources.

(4) The California Environmental Protection Agency, within existing resources, and in consultation with appropriate state and local regulatory agencies, shall evaluate the feasibility and benefits of expanding the precertification program to involve other state and local regulatory agencies with jurisdiction over other environmental media, including land and water.

Comment. Section 31206 continues former Health and Safety Code Section 39620 without change.

Article 2. Air Basin Identification and Classification

§ 31250. Air basins

31250. The state board shall:

(a) Based upon similar meteorological and geographic conditions and consideration for political boundary lines whenever practicable, divide the state into air basins to fulfill the purposes of this division.

(b) Adopt standards of ambient air quality for each air basin in consideration of the public health, safety, and welfare, including, but not limited to, health, illness, irritation to the senses, aesthetic value, interference with visibility, and effects on the economy. These standards may vary from one air basin to another. Standards relating to health effects shall be based upon the recommendations of the Office of Environmental Health Hazard Assessment.

Comment. Section 31250 continues former Health and Safety Code Section 39606 without change. Enactment of this section codifies Section 132 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 31251. Mojave Desert Air Basin

31251. (a) On or before January 1, 1997, the state board shall adopt regulations to designate, and determine the boundaries of, an air basin known as the Mojave Desert Air Basin. The air basin shall have a territory that is based upon similar meteorological and geographical conditions and consideration for political boundary lines. The air basin shall consist of at least all of the following:

(1) The desert portions of Los Angeles County that, immediately prior to the date of the adoption of the regulations, were within the Southeast Desert Air Basin.

(2) The desert portions of Kern County that, immediately prior to the date of the adoption of the regulations, were within the Southeast Desert Air Basin.

(3) Any portion of the Mojave Desert Air Quality Management District that, immediately prior to the date of the adoption of the regulations, was within the Southeast Desert Air Basin.

(4) Any other area contiguous to the areas indicated in paragraphs (1) to (3), inclusive, that the state board determines by a preponderance of the evidence is appropriate for inclusion.

(b) Areas that, immediately prior to the date of the adoption of the regulations, were within the Southeast Desert Air Basin and are not included in the Mojave Desert Air Basin shall remain in the Southeast Desert Air Basin, subject to Section 31250.

Comment. Section 31251 continues former Health and Safety Code Section 39606.1 without substantive change.

☞ **Staff Note.** Subdivision (a) specifies a deadline for the adoption of guidelines. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the regulations been adopted as required? (2) Does the requirement stated in subdivision (a) still serve a useful purpose?

§ 31252. Attainment and nonattainment designations

31252. (a) The state board, in consultation with the districts, shall identify, pursuant to subdivision (e) of Section 31300, and classify each air basin which is in attainment and each air basin which is in nonattainment for any state ambient air quality standard. This identification and classification shall be made on a pollutant-by-pollutant basis. Where the state board finds that data is not sufficient to determine the attainment or nonattainment status for an air basin, the state board shall identify the air basin as unclassified.

(b) The state board may assign an attainment, nonattainment, or unclassified designation to one or more areas within any air basin unless the state board finds and determines that the pollutant for which the designation applies affects the entire region or is produced by emission sources throughout the region.

(c) Designations made by the state board shall be reviewed annually and updated as new information becomes available.

Comment. Section 31252 continues former Health and Safety Code Section 39608 without substantive change.

Article 3. Data Collection and Evaluation

§ 31300. Evaluating air quality

31300. The state board shall:

(a) Establish a program to secure data on air quality in each air basin established by the state board.

(b) Inventory sources of air pollution within the air basins of the state and determine the kinds and quantity of air pollutants, including, but not limited to, the contribution of natural sources of emissions, to the extent feasible and necessary to carry out the purposes of this chapter. The state board shall use, to the fullest extent, the data of local agencies and other state and federal agencies in fulfilling this purpose.

(c) Monitor air pollutants in cooperation with districts and with other agencies to fulfill the purpose of this division.

(d) Adopt test procedures to measure compliance with its nonvehicular emission standards and those of districts.

(e) Establish and periodically review criteria for designating an air basin attainment or nonattainment for any state ambient air quality standard set forth in Section 70200 of Title 17 of the California Code of Regulations. In developing and reviewing these criteria, the state board shall consider instances where there is poor or limited ambient air quality data, and shall consider highly irregular or infrequent violations. The state board shall provide an opportunity for public comment on the proposed criteria, and shall adopt the criteria after a public hearing.

(f) Evaluate, in consultation with the districts and other interested parties, air quality-related indicators which may be used to measure or estimate progress in the attainment of state standards and establish a list of approved indicators. On or before July 1, 1993, the state board shall identify one or more air quality indicators to be used by districts in assessing progress as required by subdivision (b) of Section 40924 of the Health and Safety Code. The state board shall continue to evaluate the prospective application of air quality indicators and, upon a finding that adequate air quality modeling capability exists, shall identify one or more indicators which may be used by districts in lieu of the annual emission reductions mandated by subdivision (a) of Section 40914 of the Health and Safety Code. In no case shall any indicator be less stringent or less protective, on the basis of overall health protection, than the annual emission reduction requirement in subdivision (a) of Section 40914 of the Health and Safety Code.

(g) Establish, not later than July 1, 1996, a uniform methodology which may be used by districts in assessing population exposure, including, but not limited to, reduction in exposure of districtwide subpopulations such as children, the elderly, and persons with respiratory disease, to ambient air pollutants at levels above the state ambient air quality standards, for estimating reductions in population exposure for the purposes of Sections 40913, 40924, and 41503, of the Health and Safety Code and for the establishment of the means by which reductions in population exposures may be achieved. The methodology adopted pursuant to this subdivision shall be consistent with the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and with this division, including, but not limited to, Section 31303.

Comment. Section 31300 continues former Health and Safety Code Section 39607 without substantive change. For relevant legislative findings and declarations, see 1988 Cal. Stat. ch. 1568, § 1, 1992 Cal. St. ch. 945, § 18.

☞ **Staff Note.** (1) Subdivisions (f) and (g) each specify deadlines for satisfying specified requirements. These deadline provisions may be obsolete. The staff would like to receive input on two questions: (1) Have the relevant requirements been satisfied? (2) Do the deadline provisions still serve a useful purpose?

(2) This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31301. Emission inventory updates

31301. (a) The state board shall, triennially, following a public hearing, approve an update to the emission inventory required by subdivision (b) of Section 31300.

(b) Each inventory update shall include all of the following:

(1) The state board's and each district's best estimates of emissions from all sources, including, but not limited to, motor vehicles, nonroad mobile sources, stationary sources, areawide sources, and biogenic sources.

(2) A detailed verification of source category emission rate data with available scientific data, including, but not limited to, actual measurements of pollutants in the atmosphere, and an explanation of any discrepancies.

(3) An update to a mobile source emission inventory for any air quality attainment plan required by the federal Clean Air Act (42 U.S.C.A. Sec. 7401 et seq.) or this division, that considers all available information regarding current and projected vehicle miles traveled, vehicle trips, demographics, and other nontechnological factors affecting the mobile source emission inventory, and bases the mobile source emission inventory upon the best information available to achieve compliance.

(c) Any emission inventory update approved on or after January 1, 1997, shall comply with this Section.

(d) The Legislature hereby finds and declares that it is in the interests of the state that air quality plans be based on accurate emission inventories. Inaccurate inventories that do not reflect the actual emissions into the air can lead to misdirected air quality control measures, resulting in delayed attainment of standards and unnecessary and significant costs.

Comment. Section 31301 continues former Health and Safety Code Section 39607.3 without substantive change. The reference, in subdivision (a), to the date on which the triennial update requirement began (January 1, 1998), is obsolete and has not been continued.

§ 31302. Feasibility of analytic techniques

31302. At least every three years, the state board shall complete a study on the feasibility of employing air quality models and other analytical techniques to distinguish between emission control measures on the basis of their relative ambient air quality impact. As part of this study, the state board shall determine whether adequate modeling capability exists to support the use of air quality indicators or alternative measures of progress as specified in subdivision (f) of Section 31300 and Section 40914 of the Health and Safety Code. The state board shall consult with districts and affected groups in conducting this study, and, after a public hearing, shall prepare and transmit its findings to each district for its use in developing plans pursuant to Chapter 10 (commencing with Section 40910) of Division 26 of the Health and Safety Code.

Comment. Section 31302 continues former Health and Safety Code Section 39609 without substantive change. The reference to the date on which the requirement to study the feasibility of analytic techniques began (on or before December 31, 1989), is obsolete and has not been continued.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31303. Transported pollutants

31303. (a) Not later than December 31, 1989, the state board shall identify each air basin, or subregion thereof, in which transported air pollutants from upwind areas outside the air basin, or subregion thereof, cause or contribute to a violation of the state ambient air quality standard for ozone, and shall identify the district of origin of the transported air pollutants based upon the preponderance of available evidence. The state board shall identify and determine the priorities of information and studies needed to make a more accurate determination, including, but not limited to, emission inventories, pollutant characterization, ambient air monitoring, and air quality models.

(b) The state board shall, in cooperation with the districts, assess the relative contribution of upwind emissions to downwind ozone ambient air pollutant levels to the extent permitted by available data, and shall establish mitigation requirements commensurate with the level of contribution. In assessing the relative contribution of upwind emissions to downwind ozone ambient air pollutant levels, the state board shall determine if the contribution level of transported air pollutants is overwhelming, significant, inconsequential, or some combination thereof. Any determination by the state board shall be based upon a preponderance of the available evidence.

(c) The state board shall make every reasonable effort to supply air pollutant transport information to heavily impacted districts prior to the development of plans to attain the state ambient air quality standards, shall consult with affected upwind and downwind districts, and shall adopt its findings at a public hearing.

(d) The state board shall review and update its transport analysis at least once every three years.

(e) The state board shall conduct appropriate studies to carry out its responsibilities under this Section.

Comment. Section 31303 continues former Health and Safety Code Section 39610 without change.

☞ **Staff Note.** Subdivision (a) specifies a deadline for satisfying the requirements of that subdivision. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of that subdivision been satisfied? (2) Does the deadline stated in subdivision (a) still serve a useful purpose?

Article 4. Emission Reduction Credits

§ 31350. Emission reduction credits

31350. (a) The state board shall develop, and adopt in a public hearing, not later than June 30, 1997, a methodology for use by districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

(b) If necessary, the state board shall periodically update the methodology as it applies to future transactions.

Comment. Section 31350 continues subdivisions (a) and (c) of former Health and Safety Code Section 39607.5 without change.

☞ **Staff Note.** Subdivision (a) specifies a deadline for satisfying the requirements of that subdivision. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of that subdivision been satisfied? (2) Does the deadline stated in subdivision (a) still serve a useful purpose?

§ 31351. Methodology requirements

31351. In developing the methodology required under Section 31350, the state board shall do all of the following:

(a) Ensure that the methodology results in the maintenance and improvement of air quality consistent with this division.

(b) Allow those credits to be used in a market-based incentive program adopted pursuant to Article 6 (commencing with Section 31450) that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

(c) Ensure that the methodology does not do any of the following:

(1) Result in the crediting of air emissions which already have been identified as emission reductions necessary to achieve state and federal ambient air quality standards.

(2) Provide for an additional discount of credits solely as a result of emission reduction credits trading if a district already has discounted the credit as part of its process of identifying and granting those credits to sources.

(3) Otherwise provide for double-counting emission reductions.

(d) Consult with, and consider the suggestions of, the public and all interested parties, including, but not limited to, the California Air Pollution Control Officers Association and all affected regulated entities.

(e) Ensure that any credits, whether they are derived from stationary, mobile, indirect, or areawide sources, shall be permanent, enforceable, quantifiable, and surplus.

(f) Ensure that any credits derived from a market-based incentive program adopted pursuant to Article 6 (commencing with Section 31450) are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with subdivision (b).

(g) Consider all of the following factors:

(1) How long credits should be valid.

(2) Whether, and which, banking opportunities may exist for credits.

(3) How to provide flexibility to sources seeking to use credits so that they remain interchangeable and negotiable until used.

(4) How to ensure a viable trading process for sources wishing to trade credits consistent with this article.

(5) How to ensure that, if credits may be used within and between adjacent districts or air basins where sources are in proximity to one another, the use occurs while maintaining and improving air quality in both districts or air basins.

Comment. Section 31351 continues subdivision (b) of former Health and Safety Code Section 39607.5 without substantive change.

Article 5. Permit Fees on Nonvehicular Sources

§ 31400. Imposition of fees

31400. (a) In addition to funds that may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.

(b) The permit fees imposed pursuant to this article shall be collected from nonvehicular sources that are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors.

Comment. Section 31400 continues subdivisions (a) and (c) of former Health and Safety Code Section 39612 without substantive change. The reference, in subdivision (a), to the date on which the board acquired the power to compel districts to impose additional fees (July 1, 1989), is obsolete and has not been continued.

§ 31401. Allocation of fee revenues

31401. The permit fees imposed pursuant to this article shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources. Priority for expenditure of permit fees collected pursuant to this article shall be given to all of the following activities:

(a) Identifying air quality-related indicators that may be used to measure or estimate progress in the attainment of state ambient air standards pursuant to subdivision (f) of Section 31300.

(b) Establishing a uniform methodology for assessing population exposure to air pollutants pursuant to subdivision (g) of Section 31300.

(c) Updating the emission inventory pursuant to Section 31301, including emissions that cause or contribute to the nonattainment of federal ambient air standards.

(d) Identifying, assessing, and establishing the mitigation requirements for the effects of interbasin transport of air pollutants pursuant to Section 31303.

(e) Updating the state board's guidance to districts on ranking control measures for stationary sources based upon the cost effectiveness of those measures in reducing air pollution.

Comment. Section 31401 continues subdivision (b) of former Health and Safety Code Section 39612 without substantive change.

§ 31402. Air Pollution Control Fund

31402. The permit fees collected by a district pursuant to this article, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

Comment. Section 31402 continues subdivision (d) of former Health and Safety Code Section 39612 without substantive change.

§ 31403. Maximum fees collected

31403. The total amount of funds collected by fees imposed pursuant to this article, exclusive of district administrative costs, shall not exceed three million dollars (\$3,000,000) in any fiscal year.

Comment. Section 31403 continues subdivision (e) of former Health and Safety Code Section 39612 without substantive change.

§ 31404. Report

31404. On or before January 1 of each year, the state board shall report to the Governor and the Legislature on the expenditure of permit fees collected pursuant to this article. The report shall include all of the following:

(a) For the initial report prepared for the 1997-98 fiscal year, a detailed workplan that describes the expenditures the state board will make from permit fees collected pursuant to this article for that fiscal year.

(b) A report on the status of implementation of the programs prioritized for funding pursuant to Section 31401.

Comment. Section 31404 continues subdivision (f) of former Health and Safety Code Section 39612 without substantive change.

§ 31405. Operation of article

31405. This article shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

Comment. Section 31405 continues subdivision (g) of former Health and Safety Code Section 39612 without substantive change.

Article 6. Market-based Incentive Programs

§ 31450. Legislative findings and declarations

31450. The Legislature hereby finds and declares all of the following:

(a) Several regions in California suffer from some of the worst air quality in the United States.

(b) While traditional command and control air quality regulatory programs are effective in cleaning up the air, other options for improvement in air quality, such as market-based incentive programs, should be explored, provided that those programs result in equivalent emission reductions while expending fewer resources and while maintaining or enhancing the state's economy.

(c) The purpose of this article is to establish requirements under which a district board may adopt market-based incentive programs in a manner which achieves the greatest air quality improvement while strengthening the state's economy and preserving jobs.

Comment. Section 31450 continues subdivision (a) of former Health and Safety Code Section 39616 without substantive change.

§ 31451. Market-based incentive program

31451. (a) A district board may adopt a market-based incentive program as an element of the district's plan for attainment of the state or federal ambient air quality standards.

(b) A market-based incentive program that satisfies the conditions in this article may substitute for current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's plan for attainment, and may be implemented in lieu of some or all of the control measures adopted by the district pursuant to Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code.

Comment. Section 31451 continues subdivision (b) of former Health and Safety Code Section 39616 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31452. Required findings

31452. In adopting rules and regulations to implement a market-based incentive program, a district board shall, at the time that the rules and regulations are adopted, make express findings, and shall, at the time that the rules and regulations are submitted to the state board, submit appropriate information, to substantiate the basis for making the findings that each of the following conditions is met on an overall districtwide basis:

(a) The program will result in an equivalent or greater reduction in emissions at equivalent or less cost compared with current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's plan for attainment.

(b) The program will provide a level of enforcement and monitoring, to ensure compliance with emission reduction requirements, comparable with command and control air quality measures that would otherwise have been adopted by the district for inclusion in the district's plan for attainment.

(c) The program will establish a baseline methodology that provides appropriate credit so that stationary sources of air pollution which have been modified prior to implementation of the program to reduce stationary source emissions are treated equitably.

(d) The program will not result in a greater loss of jobs or more significant shifts from higher to lower skilled jobs, on an overall districtwide basis, than that which would exist under command and control air quality measures that would otherwise have been adopted as part of the district's plan for attainment. A finding of compliance with this requirement may be made in the same manner as the analyses made by the district to meet the requirements of Section 40728.5 of the Health and Safety Code.

(e) The program will promote the privatization of compliance and the availability of data in computer format. The district shall endeavor to provide sources with the option to keep records by way of electronic or computer data storage systems, rather than mechanical devices such as strip chart recorders.

(f) The program will not in any manner delay, postpone, or otherwise hinder district compliance with Chapter 10 (commencing with Section 40910) of Part 3 of Division 26 of the Health and Safety Code.

(g) The program will not result in disproportionate impacts, measured on an aggregate basis, on those stationary sources included in the program compared to other permitted stationary sources in the district's plan for attainment.

Comment. Section 31452 continues subdivision (c) of former Health and Safety Code Section 39616 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31453. Plan requirements

31453. (a) A district's plan for attainment or plan revision submitted to the state board prior to January 1, 1993, shall be designed to achieve equivalent emission reductions and reduced cost and job impacts compared to current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's plan for attainment. A district shall not implement a market-based incentive program unless the state board has determined that the plan or plan revision complies with this subdivision.

(b) A plan or plan revision submitted on or after January 1, 1993, shall be designed to meet the provisions of Section 31452 and Section 40440.1 of the Health and Safety Code if applicable. The state board shall approve the plan or plan revision prior to program implementation, and shall make its determination not later than 90 days from the date of submittal of the plan or plan revision.

(c) Upon the adoption of rules and regulations to implement the program in accordance with Section 31452, the district shall submit the rules and regulations to the state board. The state board shall, within 90 days from the date of submittal, determine whether the rules and regulations meet the requirements of this article and Section 40440.1 of the Health and Safety Code, if applicable. This subdivision does not prohibit the district from implementing the program upon the approval of the plan or plan revision and prior to submittal of the rules and regulations.

Comment. Section 31453 continues subdivision (d) of former Health and Safety Code Section 39616 without substantive change.

☞ **Staff Note.** (1) Subdivision (a) provides a requirement applicable to plans submitted before January 1, 1993. Subdivision (b) provides a requirement applicable on or after January 1, 1993. This distinction may be obsolete. The staff would like to receive input on this point.

(2) This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31454. Reassessment

31454. Within five years from the date of adoption of a market-based incentive program, the district board shall commence public hearings to reassess the program and shall, not later than seven years from the date of the district's initial adoption of the program, ratify the findings required pursuant to subdivisions (a), (b), (e), and (f) of Section 31452 and the district's compliance with Section 40440.1 of the Health and Safety Code, if applicable, with the concurrence of the state board. If the district board fails to ratify the findings within the seven-year period, the district board shall make appropriate revisions to the district's plan for attainment.

Comment. Section 31454 continues subdivision (e) of former Health and Safety Code Section 39616 without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31455. Market price review

31455. The district board shall reassess a market-based incentive program if the market price of emission trading units exceeds a predetermined level set by the district board. The district board may take action to revise the program. A predetermined market price

review level shall be set in a public hearing in consideration of the costs of command and control air quality measures that would otherwise have been adopted as part of the district's plan for attainment, costs and factors submitted by interested parties, and any other factors considered appropriate by the district board. The district board may revise the market price review level for emission trading units every three years during attainment plan updates required under Section 40925 of the Health and Safety Code. In revising the market price review level, the district board shall consider the factors used in setting the initial market price review level as well as other economic impacts, including the overall impact of the program on job loss, rate of business formation, and rate of business closure.

Comment. Section 31455 continues subdivision (f) of former Health and Safety Code Section 39616 without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31456. Application of article

31456. (a) For sources not included in market-based incentive programs, this article does not apply to, and shall in no way limit, existing district authority to facilitate compliance with particular emission control measures by imposing or authorizing sourcewide emission caps, alternative emission control plans, stationary for mobile source emission trades, mobile for mobile source emission trades, and similar measures, whether imposed or authorized by rule or permit condition.

(b) This article does not apply to the implementation of market-based transportation control measures which do not involve emissions trading.

Comment. Section 31456 continues subdivisions (g) and (h) of former Health and Safety Code Section 39616 without substantive change.

Article 7. Mobile Sources

§ 31500. Mobile source emission reduction credits

31500. Any rule, regulation, or control measure adopted pursuant to this division which allows for the use of mobile source emission reduction credits through the acceleration of the retirement of in-use motor vehicles, the repair or retirement of gross-polluting and other high-emitting vehicles, or other similar methods of reducing air pollution shall allow the person using the method to calculate the emission reductions by any of the following methods:

(a) The measurement of actual air emissions from those motor vehicles repaired or retired as a result of the rule, regulation, or control measure, pursuant to the methodology and criteria established pursuant to Sections 31350 and 31351, or, prior to adoption of the methodology by the state board, by any alternate methodology approved by the agency which has adopted the rule, regulation, or control measure, if that methodology is consistent with federal law and with Section 31351.

(b) The use of a statistically representative sample of the motor vehicles repaired or retired as a result of the rule, regulation, or control measure, utilizing the methodology and criteria established pursuant to Section 31350 and 31351, or, prior to adoption of the methodology by the state board, by any alternate methodology approved by the agency

which has adopted the rule, regulation, or control measure, if that methodology is consistent with federal law and with Section 31351.

(c) The use of vehicle fleet average emissions, as determined by the state board.

(d) This section does not apply to any motor vehicle specified in subdivision (a), (b), (f), or (k) of Section 34500 of the Vehicle Code.

Comment. Section 31500 continues former Health and Safety Code Section 39617 without substantive change.

§ 31501. Refrigerated trailers

31501. Refrigerated trailers shall be classified as mobile sources and shall be regulated by the state board on a statewide basis to prevent confusion concerning whether the trailers are stationary sources when not being driven and to prevent inconsistent regulation by districts of vehicles that are operated in more than one district. The state board shall develop regulations, on or before January 1, 2000, to achieve reductions in emissions attributable to the refrigerated trailers.

Comment. Section 31501 continues former Health and Safety Code Section 39618 without change.

Article 8. Airborne Fine Particles

§ 31550. Airborne fine particles

31550. The Legislature hereby finds and declares all of the following:

(a) Recent scientific studies have documented significant adverse public health effects associated with exposure to airborne fine particles that are smaller than 2.5 microns (PM 2.5).

(b) Federal ambient air quality standards for the control of particles smaller than 10 microns in diameter (PM 10) will require additional emission controls in California.

(c) California's existing ambient air quality monitoring program for PM 10 and PM 2.5 provides inadequate scientific information with regard to the level of public exposure to, and public health risk from, airborne fine particles, and therefore must be expanded and improved to evaluate priorities and establish appropriate control strategies.

(d) Current proposals for required monitoring of PM 2.5 by the Environmental Protection Agency may not be appropriate for properly measuring species of pollutants that comprise the principal components of airborne fine particles within the state.

(e) California needs to develop an airborne fine particle monitoring program that reflects the specific nature of California's fine particle air pollution problem and develops data suitable for use in exposure evaluations.

(f) California should use the most accurate methods available in the fine particle monitoring program that are appropriate for use in California and should strive to avoid duplication of the federal air monitoring program whenever possible.

Comment. Section 31550 continues former Health and Safety Code Section 39619 without change.

§ 31551. Monitoring program

31551. (a) The state board shall develop and conduct an expanded and revised program of monitoring of airborne fine particles smaller than 2.5 microns in diameter (PM 2.5). The program shall be designed to accomplish all of the following:

(1) The monitoring method selected shall be capable of accurately representing the spectrum of compounds that comprise PM 2.5 in the atmosphere of regions where monitoring is conducted, including nitrates and other inorganic compounds, as well as carbonaceous materials.

(2) To the extent feasible, the state board shall consider approved federal particulate methods in selecting a monitoring method for the program.

(3) The monitoring network used in the program shall site monitors so as to characterize population exposure, background conditions, and transport influence, and attain any other objective identified by the state board as necessary to understand conditions and to provide information for the development of control strategies.

(4) Portable monitors shall be used in locations not now monitored for PM 10, but where elevated PM 2.5 might be expected.

(5) During the initial two years of expanded monitoring, PM 2.5 monitoring shall be done at one or more of the highest level PM 10 sites in any region that violates the federal ambient air quality standard for PM 10, to enable a determination of the correlation between levels of PM 10 and PM 2.5.

(6) In regions where ambient source characterization studies for PM 2.5 have not been completed, the state board shall work with the district to develop and conduct those studies.

(b) The state board shall report annually by January 1 to the Legislature on the status and results of the airborne fine particle air pollution monitoring program.

Comment. Section 31551 continues former Health and Safety Code Section 39619.5 without change.

CHAPTER 4. TOXIC AIR CONTAMINANTS

Article 1. General Provisions

§ 31600. Legislative findings and declarations

31600. The Legislature finds and declares the following:

(a) That public health, safety, and welfare may be endangered by the emission into the ambient air of substances which are determined to be carcinogenic, teratogenic, mutagenic, or otherwise toxic or injurious to humans.

(b) That persons residing in California may be exposed to a multiplicity of toxic air contaminants from numerous sources which may act cumulatively to produce adverse effects, and that this phenomenon should be taken into account when evaluating the health effects of individual compounds.

(c) That it is the public policy of the state that emissions of toxic air contaminants should be controlled to levels which prevent harm to the public health.

(d) That the identification and regulation of toxic air contaminants should utilize the best available scientific evidence gathered from the public, private industry, the scientific community, and federal, state, and local agencies, and that the scientific research on which decisions related to health effects are based should be reviewed by a scientific review panel and members of the public.

(e) That, while absolute and undisputed scientific evidence may not be available to determine the exact nature and extent of risk from toxic air contaminants, it is necessary to take action to protect public health.

(f) That the state board has adopted regulations regarding the identification and control of toxic air contaminants, but that the statutory authority of the state board, the relationship of its proposed program to the activities of other agencies, and the role of scientific and public review of the regulations should be clarified by the Legislature.

(g) That the Department of Food and Agriculture has jurisdiction over pesticides to protect the public from environmentally harmful pesticides by regulating the registration and uses of pesticides.

(h) That while there is a statewide program to control levels of air contaminants subject to state and national ambient air quality standards, there is no specific statutory framework in this division for the evaluation and control of substances which may be toxic air contaminants.

(i) That the purpose of this chapter is to create a program which specifically addresses the evaluation and control of substances which may be toxic air contaminants and which complements existing authority to establish, achieve, and maintain ambient air quality standards.

(j) That this chapter is limited to toxic air contaminants and nothing in the chapter is to be construed as expanding or limiting the authority of any agency or district concerning pesticides which are not identified as toxic air contaminants.

(k) That a statewide program to control toxic air contaminants is necessary and desirable in order to provide technical and scientific assistance to the districts, to achieve the earliest practicable control of toxic air contaminants, to promote the development and use of advanced control technologies and alternative processes and materials, to identify the toxic air contaminants of concern and determine the priorities of their control, and to minimize inconsistencies in protecting the public health in various areas of the state.

Comment. Section 31600 continues former Health and Safety Code Section 39650 without change.

Article 2. Definitions

§ 31650. Application of definitions

31650. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

Comment. Section 31650 continues the introductory clause of former Health and Safety Code Section 39655 without substantive change.

§ 31655. “Airborne toxic control measure”

31655. “Airborne toxic control measure” means either of the following:

(a) Recommended methods, and, where appropriate, a range of methods, that reduce, avoid, or eliminate the emissions of a toxic air contaminant. Airborne toxic control measures include, but are not limited to, emission limitations, control technologies, the use of operational and maintenance conditions, closed system engineering, design, equipment, or work practice standards, and the reduction, avoidance, or elimination of emissions through process changes, substitution of materials, or other modifications.

(b) Emission standards adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412).

Comment. Section 31655 continues subdivision (b) of former Health and Safety Code Section 39655 without change.

§ 31660. “Federal act”

31660. “Federal act” means the Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549), and as the federal act may be further amended.

Comment. Section 31660 continues subdivision (d) of former Health and Safety Code Section 39655 without change.

§ 31665. “Office”

31665. “Office” means the Office of Environmental Health Hazard Assessment.

Comment. Section 31665 continues subdivision (e) of former Health and Safety Code Section 39655 without change.

§ 31670. “Pesticide”

31670. “Pesticide” means any economic poison as defined in Section 12753 of the Food and Agricultural Code.

Comment. Section 31670 continues subdivision (c) of former Health and Safety Code Section 39655 without change.

§ 31675. “Toxic air contaminant”

31675. “Toxic air contaminant” means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) is a toxic air contaminant. A toxic air contaminant which is a pesticide shall be regulated in its pesticidal use by the Department of Pesticide Regulation pursuant to Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

Comment. Section 31675 continues subdivision (a) of former Health and Safety Code Section 39655 without change.

Article 3. Coordination with Federal Act

§ 31700. Legislative intent

31700. It is the intent of the Legislature that the state board and the districts implement a program to regulate toxic air contaminants that will enable the state to receive approval to implement and enforce emission standards and other requirements for air pollutants subject to Section 112 of the federal act (42 U.S.C. Sec. 7412). The state board and the districts may establish a program that is consistent with the requirements for state programs set forth in subsection (l) of Section 112 and Section 502 of the federal act (42 U.S.C. Secs. 7412(l) and 7661a). Nothing in this chapter requires that the program be identical to the federal program for hazardous air pollutants as set forth in the federal act.

Comment. Section 31700 continues former Health and Safety Code Section 39656 change.

§ 31701. Identification of toxic air contaminants

31701. (a) Except as provided in subdivision (b), the state board shall identify toxic air contaminants which are emitted into the ambient air of the state using the procedures and following the requirements prescribed by Article 4 (commencing with Section 31750).

(b) The state board shall, by regulation, designate any substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) as a toxic air contaminant. A regulation that designates a hazardous air pollutant as a toxic air contaminant shall be deemed to be a regulation mandated by federal law and is not subject to Sections 11346.2 and 11346.9 of the Government Code, Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 4 (commencing with Section 31750).

Comment. Section 31701 continues former Health and Safety Code Section 39657 without substantive change.

§ 31702. Airborne toxic control measures

31702. The state board shall establish airborne toxic control measures for toxic air contaminants in accordance with all of the following:

(a) If a substance is identified as a toxic air contaminant pursuant to Article 4 (commencing with Section 31750), the airborne toxic control measure applicable to the toxic air contaminant shall be adopted following the procedures and meeting the requirements of Article 5 (commencing with Section 31800).

(b) If a substance is designated as a toxic air contaminant because it is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)), the state board shall establish the airborne toxic control measure applicable to the substance as follows:

(1) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), except as provided in paragraphs (2), (3), and (4), that emission standard adopted pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) for the hazardous air pollutant is also the airborne toxic control measure for the toxic air contaminant. The state board shall implement the relevant emission standard and it shall be the airborne toxic control measure for purposes of this chapter. The implementation of the emission standard is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code or Article 5 (commencing with Section 31800).

(2) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) and the state board finds that the emission standard does not achieve the purposes set forth in subdivision (a) or (b), as applicable, of Section 31802, the state board shall adopt an airborne toxic control measure for the toxic air contaminant that it finds will achieve those purposes. The state board shall, when it adopts an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 5 (commencing with Section 31800).

(3) If the state board implements an airborne toxic control measure applicable to the substance pursuant to paragraph (1) and later finds that the purposes set forth in subdivision (a) or (b), as applicable, of Section 31802 are not achieved by the airborne toxic control measure, the state board may revise the airborne toxic control measure to achieve those purposes. The state board shall, when it revises an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 5 (commencing with Section 31800). The state board may revise an airborne toxic control measure pursuant to this paragraph only if it first finds that the reduction in risk to the public health that will be achieved by the revision justifies the burden that will be

imposed on persons who are in compliance with the airborne toxic control measure previously implemented pursuant to paragraph (1).

(4) If an emission standard applicable to the hazardous air pollutant has not been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), the state board may adopt an airborne toxic control measure applicable to the toxic air contaminant pursuant to Article 5 (commencing with Section 31800).

Comment. Section 31702 continues former Health and Safety Code Section 39658 without substantive change.

§ 31703. Regulations

31703. (a) The state board and the districts may adopt regulations which do both of the following:

(1) Impose monitoring requirements, establish procedures for issuing, reissuing, and enforcing permits, and take any other action that may be necessary to establish, implement, and enforce programs for the regulation of hazardous air pollutants which have been listed as toxic air contaminants pursuant to subdivision (b) of Section 31701.

(2) Meet the requirements of subsection (l) of Section 112 and Section 502 of the federal act (42 U.S.C. Secs. 7412(l) and 7661a) and the guidelines and regulations adopted by the Environmental Protection Agency pursuant to those sections.

(b) In adopting regulations pursuant to subdivision (a), the state board and the districts shall, to the extent necessary to ensure that the requirements of the federal act are met, use the definitions contained in subsection (a) of Section 112 of the federal act (42 U.S.C. Sec. 7412(a)).

Comment. Section 31703 continues former Health and Safety Code Section 39659 without substantive change.

Article 4. Identification of Toxic Air Contaminants

§ 31750. Evaluation of health effects

31750. (a) Upon the request of the state board, the office, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides in their pesticidal use, which may be or are emitted into the ambient air of California and which may be determined to be toxic air contaminants. The request shall be in accordance with an agreement that ensures that the office's workload in implementing this chapter is not increased over that budgeted for the 1991-92 fiscal year. The agreement shall be revised and the office's workload increased if additional budgetary resources are appropriated to the office.

(b) The office shall submit its written evaluation and recommendations to the state board within 90 days after receiving the request of the state board pursuant to subdivision (a). The office may, however, petition the state board for an extension of the deadline, not to exceed 30 days, setting forth its statement of the reasons which prevent the office from completing its evaluation and recommendations within 90 days. Upon receipt of a request for extension of, or noncompliance with, the deadline contained in this section, the state board shall immediately transmit to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline, along with copies

of the office's statement of reasons which prevent it from completing its evaluation and recommendations in a timely manner.

Comment. Section 31750 continues subdivisions (a) and (d) of former Health and Safety Code Section 39660 without change.

§ 31751. Evaluation requirements

31751. (a) In conducting the evaluation required pursuant to Section 31750, the office shall consider all available scientific data, including, but not limited to, relevant data provided by the state board, the State Department of Health Services, the Occupational Safety and Health Division of the Department of Industrial Relations, the Department of Pesticide Regulation, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations.

(b) The evaluation required pursuant to Section 31750 shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance.

(c) The evaluation required pursuant to Section 31750 shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects. Where it can be established that a threshold of adverse health effects exists, the estimate shall include both of the following factors:

(1) The exposure level below which no adverse health effects are anticipated.

(2) An ample margin of safety which accounts for the variable effects that heterogeneous human populations exposed to the substance under evaluation may experience, the uncertainties associated with the applicability of the data to human beings, and the completeness and quality of the information available on potential human exposure to the substance. In cases where there is no threshold of significant adverse health effects, the office shall determine the range of risk to humans resulting from current or anticipated exposure to the substance.

Comment. Section 31751 continues subdivisions (b) and (c) of former Health and Safety Code Section 39660 without substantive change.

§ 31752. Information collection

31752. (a) The state board or a district may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, emitted, or used by the person of whom the request is made, in order to carry out its responsibilities pursuant to this chapter. To the extent practical, the state board or a district may collect the information in aggregate form or in any other manner designed to protect trade secrets.

(b) Any person providing information pursuant to this subdivision may, at the time of submission, identify a portion of the information submitted to the state board or a district as a trade secret and shall support the claim of a trade secret, upon the written request of the state board or district board. Subject to Section 1060 of the Evidence Code, information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission, shall not be released to any member of the public. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies when those trade secrets are relevant and necessary to the exercise of their jurisdiction provided that the public agencies exchanging those trade secrets shall preserve the protections afforded that information by this subdivision.

(c) Any information not identified as a trade secret shall be available to the public unless exempted from disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information. Upon receipt of a request for the release of information which has been claimed to be a trade secret, the state board or district shall immediately notify the person who submitted the information, and shall determine whether or not the information claimed to be a trade secret is to be released to the public. The state board or district board, as the case may be, shall make its determination within 60 days after receiving the request for disclosure, but not before 30 days following the notification of the person who submitted the information. If the state board or district decides to make the information public, it shall provide the person who submitted the information 10 days' notice prior to public disclosure of the information.

Comment. Section 31752 continues subdivision (e) of former Health and Safety Code Section 39660 without change.

§ 31753. Priority

31753. The office and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of, and exposure to, usage of the substance in California, persistence in the atmosphere, and ambient concentrations in the community. In determining the importance of these factors, the office and the state board shall consider all of the following information, to the extent that it is available:


(a) Research and monitoring data collected by the state board and the districts pursuant to Sections 31300, 32001, and 40715 of the Health and Safety Code, and by the Environmental Protection Agency pursuant to paragraph (2) of subsection (k) of Section 112 of the federal act (42 U.S.C. Sec. 7412(k)(2)).

(b) Emissions inventory data reported for substances subject to Part 6 (commencing with Section 44300) of Division 26 of the Health and Safety Code and the risk assessments prepared for those substances.

(c) Toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. Sec. 11023) and Section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. Sec. 13106).

(d) Information on estimated actual exposures to substances based on geographic and demographic data and on data derived from analytical methods that measure the dispersion and concentrations of substances in ambient air.

Comment. Section 31753 continues subdivision (f) of former Health and Safety Code Section 39660 without substantive change.

 **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31754. Assessment of indoor air contaminants

31754. (a) In evaluating the level of potential human exposure to toxic air contaminants, the state board shall assess that exposure in indoor environments as well as in ambient air conditions.

(b) The state board shall consult with the State Department of Health Services, pursuant to the program on indoor environmental quality established under Chapter 7 (commencing with Section 105400) of Part 5 of Division 103 of the Health and Safety

Code, concerning what potential toxic air contaminants may be found in the indoor environment and on the best methodology for measuring exposure to these contaminants.

(c) When the state board identifies toxic air pollutants that have been found in any indoor environment, the state board shall refer all available data on that exposure and the suspected source of the pollutant to the State Department of Health Services, the Division of Occupational Safety and Health of the Department of Industrial Relations, the State Energy Resources Conservation and Development Commission, the Department of Housing and Community Development, and the Department of Consumer Affairs.

(d) In assessing human exposure to toxic air contaminants in indoor environments pursuant to this section, the state board shall identify the relative contribution to total exposure to the contaminant from indoor concentrations, taking into account both ambient and indoor air environments.

Comment. Section 31754 continues former Health and Safety Code Section 39660.5 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 31755. Report

31755. (a)(1) Upon receipt of the evaluation and recommendations prepared pursuant to Sections 31750 to 31753, inclusive, the state board, in consultation with, and with the participation of, the office, shall prepare a report in a form which may serve as the basis for regulatory action regarding a particular substance pursuant to Section 31751.

(2) The report shall include and be developed in consideration of the evaluation and recommendations of the office.

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed by the scientific review panel established pursuant to Sections 31850 to 31857, inclusive. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel, which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may, however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is not based upon sound scientific knowledge, methods, or practices, the report shall be returned to the state board, and the state board, in consultation with, and with the participation of, the office, shall prepare revisions to the report which shall be resubmitted, within 30 days following receipt of the panel's determination, to the scientific review panel which shall review the report in conformance with subdivision (b) prior to a formal proposal by the state board pursuant to Section 31756.

Comment. Section 31755 continues former Health and Safety Code Section 39661 without substantive change.

§ 31756. Determinations and regulations

31756. (a) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (c) of Section 31755, the state board shall prepare a

hearing notice and a proposed regulation which shall include the proposed determination as to whether a substance is a toxic air contaminant.

(b) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state board shall list, by regulation, substances determined to be toxic air contaminants.

(c) If a substance is determined to be a toxic air contaminant, the regulation shall specify a threshold exposure level, if any, below which no significant adverse health effects are anticipated, and an ample margin of safety which accounts for the factors described in subdivisions (b) and (c) of Section 31751.

(d) In evaluating the nature of the adverse health effect and the range of risk to humans from exposure to a substance, the state board shall utilize scientific criteria which are protective of public health, consistent with current scientific data.

(e) Any person may petition the state board to review a determination made pursuant to this section. The petition shall specify the additional scientific evidence regarding the health effects of a substance which was not available at the time the original determination was made and any other evidence which would justify a revised determination.

Comment. Section 31756 continues former Health and Safety Code Section 39662 without substantive change.

§ 31757. Landfill gases

31757. (a) For purposes of this section “landfill” means a solid waste landfill, as defined in subdivision (a) of Section 40195.1 of the Public Resources Code.

(b) The Legislature hereby finds and declares all of the following:

(1) Despite the adoption of stringent emission reduction measures, especially as applied to stationary sources, southern California and other regions of the state exceed a number of federal and state ambient air quality standards, often by wide margins.

(2) Noncombustion landfill gas control technologies that convert landfill gas to alternative fuels may offer opportunities to achieve additional emission reductions beyond those currently being achieved.

(3) Alternative fuels produced from landfill gas may generate a revenue stream for landfill operators and may be sold as, among other things, a reformulated gasoline additive and an alternative vehicle fuel. Both uses are key components of local air quality management plans in nonattainment areas to achieve compliance with state and federal ambient air quality standards.

(4) It is in the interests of the people of this state to identify and encourage the use of technologies that can cost-effectively achieve additional pollutant emission reductions for stationary sources while producing a marketable product from renewable waste materials that can further reduce emissions from vehicles.

(c) On or before January 1, 1998, the state board, in consultation with the south coast district and other districts, as feasible, shall conduct a study and prepare a report thereon that does all of the following:

(1) Identifies commercially available technologies to control landfill gas that are not based on combustion as the means of controlling or destroying emissions from landfill gas.

(2) Analyzes the effects on air quality of the use of technologies identified pursuant to paragraph (1) and compares the results of that analysis with emissions from landfill gas control technologies for which best available control technology has been established, emphasizing opportunities for further reductions in emissions of criteria pollutants.

(3) Identifies opportunities for emission reduction credits resulting from the use of technologies identified pursuant to paragraph (1) compared to the use of landfill gas control technologies for which best available control technology has been established, based on the state board's best assessment of current and projected values of credits for specified pollutants.

(4) Identifies those landfill gas control technologies that have the ability to generate revenue from the production of energy or alternative fuels, and analyzes the potential economic impact of those revenues on the use of the technologies.

(d) In preparing the report required by subdivision (c), the state board shall make all reasonable efforts to obtain financial and technical assistance from districts, and districts that assist in preparing the report shall make all reasonable efforts to provide that assistance to the state board.

Comment. Section 31757 continues former Health and Safety Code Section 39663 without change.

☞ **Staff Note.** (1) This section, relating to the control of landfill gas emissions, does not fit well in this article, which relates to the identification of toxic air contaminants. It may be better situated elsewhere, either in Part 4 (Nonvehicular Air Pollution Control) or in Part 13 (Landfill Gas) of Division 5 (Toxic and Hazardous Substances). The staff would like to receive input on this point.

(2) Subdivision (c) specifies a deadline for satisfying the requirements of that subdivision. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Have the requirements of that subdivision been satisfied? (2) Does the deadline stated in subdivision (c) still serve a useful purpose?

§ 31758. Aerial application of pesticides in urban areas

31758. The State Department of Health Services shall conduct an epidemiological study, over a period of up to 10 years, of possible long-term health effects related to the aerial application of pesticides in urban areas, including, but not limited to, cancer, birth defects, and respiratory illnesses.

Comment. Section 31758 continues former Health and Safety Code Section 39664 without change.

☞ **Staff Note.** This section, relating to a study by the Department of Health Services, does not fit well in this article, which relates to the duties of the State Air Resources Board. It may be better situated elsewhere, perhaps in Division 6 (Pesticides). The staff would like to receive input on this point.

Article 5. Control of Toxic Air Contaminants

§ 31800. Report

31800. (a) Following adoption of the determinations pursuant to Section 31756, the executive officer of the state board shall, with the participation of the districts, and in consultation with affected sources and the interested public, prepare a report on the need and appropriate degree of regulation for each substance which the state board has determined to be a toxic air contaminant.

(b) The report shall address all of the following issues, to the extent data can reasonably be made available:

(1) The rate and extent of present and anticipated future emissions, the estimated levels of human exposure, and the risks associated with those levels.

(2) The stability, persistence, transformation products, dispersion potential, and other physical and chemical characteristics of the substance when present in the ambient air.

(3) The categories, numbers, and relative contribution of present or anticipated sources of the substance, including mobile, industrial, agricultural, and natural sources.

(4) The availability and technological feasibility of airborne toxic control measures to reduce or eliminate emissions, the anticipated effect of airborne toxic control measures on levels of exposure, and the degree to which proposed airborne toxic control measures are compatible with, or applicable to, recent technological improvements or other actions which emitting sources have implemented or taken in the recent past to reduce emissions.

(5) The approximate cost of each airborne toxic control measure, the magnitude of risks posed by the substances as reflected by the amount of emissions from the source or category of sources, and the reduction in risk which can be attributed to each airborne toxic control measure.

(6) The availability, suitability, and relative efficacy of substitute compounds of a less hazardous nature.

(7) The potential adverse health, safety, or environmental impacts that may occur as a result of implementation of an airborne toxic control measure.

(8) The basis for the finding required by paragraph (3) of subdivision (b) of Section 31702, if applicable.

(c) The staff report, and relevant comments received during consultation with the districts, affected sources, and the public, shall be made available for public review and comment at least 45 days prior to the public hearing required by Section 31801.

Comment. Section 31800 continues former Health and Safety Code Section 39665 without substantive change.

§ 31801. Adoption of airborne toxic control measures

31801. Following a noticed public hearing, the state board shall adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

Comment. Section 31801 continues subdivision (a) of former Health and Safety Code Section 39666 without change.

§ 31802. Standards

31802. (a) For toxic air contaminants for which the state board has determined, pursuant to Section 31756, that there is a threshold exposure level below which no significant adverse health effects are anticipated, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 31800, to reduce emissions sufficiently so that the source will not result in, or contribute to, ambient levels at or in excess of the level which may cause or contribute to adverse health effects as that level is estimated pursuant to subdivisions (b) and (c) of Section 31751.

(b) For toxic air contaminants for which the state board has not specified a threshold exposure level pursuant to Section 31756, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 31800, to reduce emissions to the lowest level achievable through application of best available control technology or a more effective control method, unless the state board or a district board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health.

Comment. Section 31802 continues subdivisions (b) and (c) of former Health and Safety Code Section 39666 without substantive change.

§ 31803. Enforcement

31803. Not later than 120 days after the adoption or implementation by the state board of an airborne toxic control measure pursuant to this article or Section 31702, the districts shall implement and enforce the airborne toxic control measure or shall propose regulations enacting airborne toxic control measures on nonvehicular sources within their jurisdiction which meet the requirements of Sections 31802 and 31804, except that a district may, at its option, and after considering the factors specified in subdivision (b) of Section 31800, adopt and enforce equally effective or more stringent airborne toxic control measures than the airborne toxic control measures adopted by the state board. A district shall adopt rules and regulations implementing airborne toxic control measures on nonvehicular sources within its jurisdiction in conformance with Sections 31802 and 31804, not later than six months following the adoption of airborne toxic control measures by the state board.

Comment. Section 31803 continues subdivision (d) of former Health and Safety Code Section 39666 without substantive change.

§ 31804. New or modified sources

31804. District new source review rules and regulations shall require new or modified sources to control emissions of toxic air contaminants consistent with Sections 31802 and 31803 and Article 3 (commencing with Section 31700).

Comment. Section 31804 continues subdivision (e) of former Health and Safety Code Section 39666 without substantive change.

§ 31805. Alternative methods

31805. Where an airborne toxic control measure requires the use of a specified method or methods to reduce, avoid, or eliminate the emissions of a toxic air contaminant, a source may submit to the district an alternative method or methods that will achieve an equal or greater amount of reduction in emissions of, and risk associated with, that toxic air contaminant. The district shall approve the proposed alternative method or methods if the operator of the source demonstrates that the method is, or the methods are, enforceable, that equal or greater amounts of reduction in emissions and risk will be achieved, and that the reductions will be achieved within the time period required by the applicable airborne toxic control measure. The district shall revoke approval of the alternative method or methods if the source fails to adequately implement the approved alternative method or methods or if subsequent monitoring demonstrates that the alternative method or methods do not reduce emissions and risk as required. The district shall notify the state board of any action it proposes to take pursuant to this section. This section is operative only to the extent it is consistent with the federal act.

Comment. Section 31805 continues subdivision (f) of former Health and Safety Code Section 39666 without substantive change.

§ 31806. Vehicular emission standards

31806. Based on its determinations pursuant to Section 31756, the state board shall consider the adoption of revisions in the emission standards for vehicular sources and regulations specifying the content of motor vehicle fuel, to achieve the maximum

possible reduction in public exposure to toxic air contaminants. Except for regulations affecting new motor vehicles which shall be based upon the most advanced technology feasible for the model year, regulations developed pursuant to this section shall be based on the utilization of the best available control technologies or more effective control methods, unless the state board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health. Those regulations may include, but are not limited to, the modification, removal, or substitution of vehicle fuel, vehicle fuel components, or fuel additives, or the required installation of vehicular control measures on new motor vehicles.

Comment. Section 31806 continues former Health and Safety Code Section 39667 without substantive change.

§ 31807. Monitoring options report

31807. The state board shall, on or before January 1, 1989, prepare a written report on the availability and effectiveness of toxic air contaminant monitoring options in consultation with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Department of Pesticide Regulation, and the Office of Environmental Health Hazard Assessment. In preparing the report, the state board shall conduct at least one public workshop. The report shall include, but not be limited to, all of the following:

(a) An evaluation of existing toxic air contaminant monitoring capacity and assessment capabilities within the state, including, but not limited to, existing monitoring stations and equipment of the state board and of the districts.

(b) An analysis of the available options for monitoring and assessing current levels of exposure to identified and all potential toxic air contaminants in urban areas of the state, taking into consideration the technical feasibility and costs of these monitoring options. The report shall evaluate the extent to which the establishment of additional monitoring capacity is appropriate and feasible to facilitate the identification and control of toxic air contaminants.

(c) A list of all substances or classes of substances addressed by the state board pursuant to subdivision (b), including, but not limited to, a discussion of the appropriateness and availability of monitoring for those substances or classes of substances.

(d) An analysis of the feasibility and costs of establishing an indoor toxic air contaminant monitoring program to facilitate the implementation of Section 31754.

Comment. Section 31807 continues subdivision (a) of former Health and Safety Code Section 39668 without substantive change. Enactment of this section codifies Section 135 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

☞ **Staff Note.** Subdivision (a) specifies a deadline for preparing the report. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the report prepared as required? (2) Does the deadline still serve a useful purpose?

§ 31808. Monitoring options report

31808. Based on the findings in the report prepared pursuant to Section 31807, the state board shall develop, by July 1, 1989, in conjunction with the districts, guidelines for establishing supplemental toxic air contaminant monitoring networks to be implemented by the districts. The state board shall develop the guidelines only to the extent that it

determines, pursuant to subdivision (b) of Section 31807, that establishing additional monitoring capacity is appropriate and feasible.

Comment. Section 31808 continues subdivision (b) of former Health and Safety Code Section 39668 without substantive change.

☞ **Staff Note.** This section specifies a deadline for the development of guidelines. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Were the guidelines prepared as required? (2) Does the deadline still serve a useful purpose?

§ 31809. Monitoring networks

31809. The guidelines established pursuant to Section 31808 shall include a priority list for establishing and implementing the supplemental toxic air contaminant monitoring networks. The state board shall give priority to that supplemental monitoring capacity it determines to be most needed to identify and control toxic air contaminants. The state board shall allocate to districts, in the priority order included in the guidelines, state funds provided in subdivision (b) of Section 3 of Chapter 1219 of the Statutes of 1987 and in subsequent Budget Acts for establishing and implementing the supplemental toxic air contaminant monitoring networks. The state board shall allocate state funds to the districts, upon appropriation by the Legislature, on a 50 percent matching basis, and shall not provide state funds for the supplemental toxic air contaminant monitoring program established by Section 40715 of the Health and Safety Code to any district in excess of district funds allocated by the district in establishing and implementing the supplemental monitoring networks created pursuant to Section 40715 of the Health and Safety Code.

Comment. Section 31809 continues subdivision (c) of former Health and Safety Code Section 39668 without substantive change.

☞ **Staff Note.** (1) This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

(2) The budget allocation reference to subdivision (b) of Section 3 of Chapter 1219 of the Statutes of 1987 appears to be obsolete. The staff would like to receive input on whether this reference is still useful.

§ 31810. Matching funds

31810. The state board shall request in its annual budget sufficient state funds, in addition to those provided in subdivision (b) of Section 3 of Chapter 1219 of the Statutes of 1987, to match, on a 50 percent basis, those district funds allocated by the districts for establishing and implementing the supplemental monitoring program specified in the guidelines adopted pursuant to subdivision (b).

Comment. Section 31810 continues subdivision (d) of former Health and Safety Code Section 39668 without substantive change.

☞ **Staff Note.** The budget allocation reference to subdivision (b) of Section 3 of Chapter 1219 of the Statutes of 1987 appears to be obsolete. The staff would like to receive input on whether this reference is still useful.

§ 31811. Application of chapter

31811. Nothing in this chapter is a limitation on the authority of the state board or a district to implement and enforce an airborne toxic control measure adopted prior to January 1, 1993.

Comment. Section 31811 continues former Health and Safety Code Section 39669 without change.

Article 6. Scientific Review Panel

§ 31850. Appointment of panel

31850. A nine-member Scientific Review Panel on Toxic Air Contaminants shall be appointed to advise the state board and the Department of Pesticide Regulation in their evaluation of the health effects toxicity of substances pursuant to Article 4 (commencing with Section 31750) of this chapter and Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

Comment. Section 31850 continues subdivision (a) of former Health and Safety Code Section 39670 without substantive change.

§ 31851. “Panel”

31851. For the purposes of this article, “panel” means the Scientific Review Panel on Toxic Air Contaminants.

Comment. Section 31851 is new. It is added for drafting convenience.

§ 31852. Composition of panel

31852. The members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research, and shall be appointed as follows, subject to Section 31858, for a term of three years:

(a) Five members shall be appointed by the Secretary for Environmental Protection, one of whom shall be qualified as a pathologist, one of whom shall be qualified as an oncologist, one of whom shall be qualified as an epidemiologist, one of whom shall be qualified as an atmospheric scientist, and one of whom shall have relevant scientific experience and shall be experienced in the operation of scientific review or advisory bodies.

(b) Two members shall be appointed by the Senate Committee on Rules, one of whom shall be qualified as a biostatistician and one of whom shall be a physician or scientist specializing in occupational medicine.

(c) Two members shall be appointed by the Speaker of the Assembly, one of whom shall be qualified as a toxicologist and one of whom shall be qualified as a biochemist or molecular biologist.

(d) Members of the panel shall be appointed from a pool of nominees submitted to each appointing body by the President of the University of California. The pool shall include, at a minimum, three nominees for each discipline represented on the panel, and shall include only individuals who hold, or have held, academic or equivalent appointments at universities and their affiliates in California.

Comment. Section 31852 continues subdivision (b) of former Health and Safety Code Section 39670 without substantive change.

§ 31853. Chairperson

31853. The Secretary for Environmental Protection shall appoint a member of the panel to serve as chairperson.

Comment. Section 31853 continues subdivision (c) of former Health and Safety Code Section 39670 without change.

§ 31854. Consultants and committees

31854. The panel may utilize special consultants or establish ad hoc committees, which may include other scientists, to assist it in performing its functions.

Comment. Section 31854 continues subdivision (d) of former Health and Safety Code Section 39670 without change.

§ 31855. Financial disclosure statements

31855. Members of the panel, and any ad hoc committee established by the panel, shall submit annually a financial disclosure statement that includes a listing of income received within the preceding three years, including investments, grants, and consulting fees derived from individuals or businesses which might be affected by regulatory actions undertaken by the state board or districts pursuant to this chapter. The financial disclosure statements submitted pursuant to this section are public information. Members of the panel shall be subject to the disqualification requirements of Section 87100 of the Government Code.

Comment. Section 31855 continues subdivision (e) of former Health and Safety Code Section 39670 without substantive change.

§ 31856. Compensation and reimbursement

31856. Members of the panel shall receive one hundred dollars (\$100) per day for attending panel meetings and meetings of the state board, or upon authorization of the chairperson of the state board while on official business of the panel, and shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties.

Comment. Section 31856 continues subdivision (f) of former Health and Safety Code Section 39670 without change.

§ 31857. Responsibility for support of panel

31857. The state board and the office, and, in the case of economic poisons, the Department of Pesticide Regulation, shall provide sufficient resources for support of the panel, including technical, administrative, and clerical support, which shall include, but not be limited to, office facilities and staff sufficient for the maintenance of files, scheduling of meetings, arrangement of travel accommodations, and preparation of panel findings, as required by subdivision (b) of Section 31755.

Comment. Section 31857 continues subdivision (g) of former Health and Safety Code Section 39670 without substantive change.

§ 31858. Terms

31858. (a) The terms of the members of the Scientific Review Panel on Toxic Air Contaminants appointed pursuant to Section 31852 shall be staggered so that the terms of three members expire each year. To accomplish this, the terms of six members are extended in the following manner:

(1) The term of one member appointed pursuant to subdivision (a) of Section 31852 is extended until January 1, 1988, and the terms of three members appointed pursuant to

that paragraph are extended until January 1, 1989, as designated by the Secretary of Environmental Affairs.

(2) The term of one member appointed pursuant to subdivision (b) of Section 31852 is extended until January 1, 1988, as designated by the Senate Committee on Rules.

(3) The term of one member appointed pursuant to subdivision (c) of Section 31852 is extended until January 1, 1988, as designated by the Speaker of the Assembly.

(4) The terms of the three remaining members shall expire January 1, 1987. Thereafter, each appointment shall be for a term of three years, as provided in Section 31852.

Comment. Section 31858 continues former Health and Safety Code Section 39671 without substantive change.

☞ **Staff Note.** This section provides starting dates for the staggering of the terms of panel members. These dates may be obsolete. The staff would like to receive input on whether preservation of these dates in the statute serves a useful purpose.

Article 7. Penalties

§ 31900. Civil penalties

31900. (a) Except as otherwise provided in subdivision (b), any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 31703 or Article 5 (commencing with Section 31800) or which is implemented and enforced as authorized by subdivision (b) of Section 31702 is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b)(1) Any person who violates any rule or regulation, emission limitation, permit condition, order fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(l)) or the regulations adopted pursuant thereto, adopted pursuant to Section 31703 or Article 5 (commencing with Section 31800) or which is implemented and enforced as authorized by subdivision (b) of Section 31702 is strictly liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation is sought, there is no liability under paragraph (1) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this paragraph shall not apply to a violation of federally enforceable requirements that occur at a Title V source.

(3) Paragraph (2) shall not apply to a violation of a toxic air contaminant rule, regulation, permit, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto.

Comment. Section 31900 continues former Health and Safety Code Section 39674 without substantive change.

§ 31901. Preclusion of criminal prosecution

31901. Sections 42400, 42400.1, 42400.2, and 42402.2 of the Health and Safety Code apply to violations of regulations or orders adopted pursuant to Section 31703 or Article 5 (commencing with Section 31800) or which are implemented and enforced as authorized by subdivision (b) of Section 31702. The recovery of civil penalties pursuant to Section 31900 or Section 42402.2 of the Health and Safety Code precludes criminal prosecution pursuant to Section 42400.1 or 42400.2 of the Health and Safety Code for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this division.

Comment. Section 31901 continues subdivision (a) of former Health and Safety Code Section 39675 without substantive change. Subdivision (b), which made clear that the adoption of former Health and Safety Code Section 39675 was intended to codify then existing law, is obsolete and is not continued.

☞ **Staff Note. (1)** Subdivision (b) of Section 39675 provides: “The adoption of this Section does not constitute a change in, but is declaratory of, existing law.” The staff believes that this provision is obsolete, because it relates to the intent when the law was first adopted, in 1990. Reenactment of this language may cause confusion as to the status of changes in the law that have occurred since enactment of Section 39675.

(2) This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

CHAPTER 5. RESEARCH

§ 32000. Legislative declaration

32000. The Legislature hereby declares that an effective research program is an integral part of any broad-based statewide effort to combat air pollution.

Comment. Section 32000 continues former Health and Safety Code Section 39700 without change.

§ 32001. Coordination and collection of data

32001. The state board shall coordinate and collect research data on air pollution, including, but not limited to, all of the following:

- (a) Research relating to specific problems in the following areas:
 - (1) Motor vehicle emissions control, including alternative propulsion systems, cleaner burning fuels, and improved motor vehicle pollution control devices.
 - (2) Control of nonvehicular emissions.
 - (3) Control of specific contaminants to meet ambient air quality standards.
 - (4) Atmospheric chemistry and physics.
 - (5) Effects of air pollution on human health and comfort, plants and animals, and reduction in visibility.
 - (6) Instrumentation development.
 - (7) Economic and ecological analysis.
 - (8) Mathematical model development.
 - (9) Trends in atmospheric quality throughout the state.
 - (10) Alternatives to agricultural burning.
- (b) The consequences of various alternative solutions to specific air pollution problems.

(c) The identification of knowledge gaps.

Comment. Section 32001 continues former Health and Safety Code Section 39701 without change.

§ 32002. Report to legislature

32002. The state board shall report to the Legislature whenever it deems necessary to provide information on problems relating to air quality management.

Comment. Section 32002 continues former Health and Safety Code Section 39702 without change.

§ 32003. Administration and coordination

32003. The state board shall administer and coordinate all air pollution research funded, in whole or in part, with state funds. In discharging its responsibilities, the state board has all of the following duties and powers:

- (a) Establish applied research objectives.
- (b) Receive and review all air pollution research proposals.
- (c) Recommend the initiation of specific air pollution research projects.
- (d) Award contracts for air pollution research projects.
- (e) Establish the administrative and review procedures necessary to carry out this Section.
- (f) Collect, validate, and disseminate educational information relating to air pollution.

Comment. Section 32003 continues former Health and Safety Code Section 39703 without change.

§ 32004. Contracts

32004. In awarding contracts for the conduct of air pollution research, the state board shall consider the capability of the University of California to mount a comprehensive program of research to seek solutions to air pollution problems and the ability of the university, through its several campuses, to mobilize a comprehensive research program for this purpose.

Comment. Section 32004 continues former Health and Safety Code Section 39704 without change.

§ 32005. Screening committee

32005. (a) The state board shall appoint a screening committee of not to exceed nine persons, the membership of which may be rotated as determined by the state board.

(b) The committee shall consist of physicians, scientists, biologists, chemists, engineers, meteorologists, and other persons who are knowledgeable, technically qualified, and experienced in air pollution problems for which projects are being reviewed. The committee shall review, and give its advice and recommendations with respect to, all air pollution research projects funded by the state, including both those conducted by the state board and those conducted under contract with the state board.

(c) The committee members shall receive one hundred dollars (\$100) per day for each day they attend a meeting of the state board or meet to perform their duties under this Section. In addition to the compensation, they shall receive their actual and necessary travel expenses incurred while performing such duties.

Comment. Section 32005 continues former Health and Safety Code Section 39705 without change.

§ 32006. Cotton gin trash incinerator heat exchanger

32006. The fees deposited in the Air Pollution Control Fund pursuant to Section 41853.5 of the Health and Safety Code are hereby continuously appropriated to the state board for research and development of a cotton gin trash incinerator heat exchanger or other device for the disposal of solid waste which is produced from the ginning of cotton, consistent with emission standards set by a district board or the state board. The state board shall consult with the Solid Waste Management Board prior to awarding a contract for, or conducting, such research and development. If the state board determines that such a device is available or that further expenditures for such purposes would not contribute meaningfully to their development, the fees shall be utilized in accordance with the provisions of Section 43014 of the Health and Safety Code.

Comment. Section 32006 continues former Health and Safety Code Section 39706 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 32007. Legislative findings and declarations

32007. The Legislature hereby finds and declares that the Connelly-Areias-Chandler Rice Straw Burning Reduction Act was enacted in 1991 to phase down rice straw burning and improve the air quality for the citizens of the state. This creates an additional significant cost to rice growers, with potential adverse impacts on the farming communities, including lost farm production; lost state, local, and federal tax revenues; lost jobs; and reduction of wildlife habitat in the rice fields. The commercial technologies that could utilize straw, making it a commodity rather than a waste disposal problem, have not developed in the rice growing areas because of the lack of marketplace risk capital to take technologies from the laboratory stage to demonstration projects. To retain the public benefits from having a viable rice growing industry in California and to improve air quality, there is a need to provide cost-sharing grants for the development of demonstration projects for new rice straw technologies in the marketplace.

Comment. Section 32007 continues former Health and Safety Code Section 39750 without change.

§ 32008. Rice Straw Demonstration Project Fund

32008. The Rice Straw Demonstration Project Fund is hereby created in the State Treasury. The fund shall be administered by the state board for the purpose of developing demonstration projects for new rice straw technologies in the rice straw growing regions of California.

Comment. Section 32008 continues former Health and Safety Code Section 39751 without change.

§ 32009. Cost-sharing grants

32009. The state board shall provide cost-sharing grants for the development of demonstration projects for new rice straw technologies according to criteria developed by the state board, in consultation with the University of California, the Trade and Commerce Agency, and the Department of Food and Agriculture, and adopted at a noticed public hearing held by the state board. The criteria shall include, but shall not be limited to, all of the following:

(a) Proposed projects shall use a technology that could use significant volumes of rice straw annually if it is commercialized, based upon such factors as potential markets and viability of the technology in meeting market demands.

(b) The state board shall provide not more than 50 percent of the cost for each demonstration project.

(c) Public and private support shall be demonstrated for proposed projects, including local community support from the rice growing community where the project would be located.

(d) The grants shall be authorized and allocated during the 1997-98 and 1998-99 fiscal years. Grants may be expended, under the grant agreement, during a period not to exceed three years from the date that the grant is awarded.

(e) Preference shall be given to projects located within the rice growing regions of the Sacramento Valley and which may be replicated throughout the region.

(f) Projects should demonstrate technical and economic feasibility.

Comment. Section 32009 continues former Health and Safety Code Section 39752 without change.

§ 32010. Necessary funding

32010. It is the intent of the Legislature that funding for purposes of this chapter be provided in the annual Budget Act. The state board may use not more than 10 percent of the rice straw technology demonstration cost-sharing funds for administrative and project review costs in carrying out the grant program.

Comment. Section 32010 continues former Health and Safety Code Section 39753 without change.

CHAPTER 6. AIR POLLUTION CONTROL SUBVENTION PROGRAM

Article 1. General Provisions

§ 32100. Administration by state board

32100. The state board shall administer, pursuant to this chapter, such funds as may be appropriated to it for the purposes of this chapter.

Comment. Section 32100 continues former Health and Safety Code Section 39801 without change.

§ 32101. “Dollars budgeted”

32101. As used in this chapter, “dollars budgeted” means moneys derived from revenue sources within a district for use in its air pollution control programs.

Comment. Section 32101 continues former Health and Safety Code Section 39800 without change.

§ 32102. Funds for administration

32102. The state board may allocate to itself sufficient moneys to administer the subvention program under this chapter and to conduct reviews authorized by Section 32201.

Comment. Section 32102 continues former Health and Safety Code Section 39809 without substantive change.

§ 32103. Unallocated funds

32103. Any moneys appropriated to the state board for expenditure under this chapter not allocated during the fiscal year shall revert to the General Fund.

Comment. Section 32103 continues former Health and Safety Code Section 39811 without change.

Article 2. Subventions

§ 32150. Use and allocation of funds

32150. The state board may subvene up to one dollar (\$1) for every dollar budgeted for use by any of the following:

- (a) A district whose boundaries include an entire air basin.
- (b) Districts whose boundaries together include an entire air basin and which are parties to one joint powers agreement or other enforceable agreement which provides for all of the following:
 - (1) Uniform rules and regulations among all districts, excluding administrative rules and regulations.
 - (2) At least four meetings per year of the basinwide air pollution control council formed under Section 40900 of the Health and Safety Code, or an equivalent procedure for basinwide consideration of policy matters.
 - (3) Suitable sharing of qualified air pollution personnel and equipment.

Comment. Section 32150 continues subdivision (a) of former Health and Safety Code Section 39802 without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 32151. Minimum and maximum amounts

32151. (a) Subventions under Section 32150 shall not exceed twenty-three cents (\$0.23) per capita, but shall not be less than eighteen thousand dollars (\$18,000) for any district, if the district provides the required matching funds, except as specified in subdivision (b).

(b) If a district is a rural district, as defined by the state board, the minimum subvention shall be that specified in Section 32152 if the district provides the required matching funds and does one of the following:

- (1) Has a fee system that fully recovers the district's cost of issuing and renewing permits, performing source inspections, determining compliance status, and processing variances for stationary sources which emit 25 or more tons annually of any regulated pollutant.
- (2) Provides its matching funds, for any funds authorized by Section 32152 in excess of the dollar amount subvented to the district pursuant to this chapter in fiscal year 1986-87, from an increase in moneys budgeted over the level of funding budgeted for the 1986-87 fiscal year.

Comment. Section 32151 continues subdivision (b) of former Health and Safety Code Section 39802 without substantive change.

§ 32152. Minimum amounts

32152. Minimum subventions for purposes of subdivision (b) of Section 32151 shall be determined as follows:

(a) If the amount appropriated in the Budget Act for district subventions is equal to or less than seven million eleven thousand dollars (\$7,011,000), the minimum subvention is eighteen thousand dollars (\$18,000).

(b) If the amount appropriated in the Budget Act for district subventions is at least seven million five hundred eleven thousand dollars (\$7,511,000), the minimum subvention is thirty-four thousand four hundred dollars (\$34,400).

(c)(1) If the amount appropriated in the Budget Act for district subventions is more than seven million eleven thousand dollars (\$7,011,000), but less than seven million five hundred eleven thousand dollars (\$7,511,000), the minimum subvention is the sum of (A) eighteen thousand dollars (\$18,000) and (B) the product of (i) sixteen thousand four hundred dollars (\$16,400) multiplied by (ii) the amount by which the funds budgeted for district subventions exceeds seven million eleven thousand dollars (\$7,011,000) divided by five hundred thousand dollars (\$500,000).

(2) Any portion of the amount appropriated in the Budget Act for district subventions which is more than seven million eleven thousand dollars (\$7,011,000), but less than seven million five hundred eleven thousand dollars (\$7,511,000), and which is not awarded in accordance with the determination of minimum subventions pursuant to paragraph (1) shall be subvended pursuant to Section 32157 only to rural districts, as defined by the state board.

Comment. Section 32152 continues former Health and Safety Code Section 39802.5 without substantive change.

§ 32153. Subventions in other air basins

32153. In air basins where funds are not subvended pursuant to Sections 32150, 32151, and 32155, the state board may subvene up to two dollars (\$2) for every three dollars (\$3) budgeted by a district. Subventions under this section shall not exceed eighteen and four-tenths cents (\$0.184) per capita, but shall not be less than twelve thousand dollars (\$12,000) for any district, if the district provides the required matching funds. Any county district which merged after January 1, 1980, into a unified district or regional district pursuant to this division shall have its minimum subvention under this section transferred to the unified district or regional district if the unified district or regional district provides the required matching funds. A unified district or regional district which has a county district minimum subvention transferred to it under this section may not also receive subventions under the per capita provisions of this section.

Comment. Section 32153 continues former Health and Safety Code Section 39803 without substantive change.

☞ **Staff Note.** The reference to the date after which the minimum subvention of unifying counties or districts shall be transferred (January 1, 1980) may be obsolete. The staff would like to receive input on whether this reference still serves a useful purpose.

§ 32154. Air basins of 98,000 or fewer

32154. In air basins having a population of less than 98,000, the state board may subvene more than the specified amount allowed under Sections 32150, 32151, and 32155, if the subvention does not exceed forty-five thousand dollars (\$45,000) per air

basin and each district affected adopts a budget equal to or exceeding twenty-three cents (\$0.23) per capita.

Comment. Section 32154 continues former Health and Safety Code Section 39804 without substantive change.

§ 32155. Unified and regional districts

32155. The merger into a unified or regional district pursuant to this division by any county district shall cause the minimum subvention of the county district to be transferred to the unified district or regional district if the unified district or regional district provides the required matching funds. If portions of a county district are merged into unified or regional districts pursuant to this division, the state board shall apportion, according to population within each portion of the county, the minimum subvention of the county district to the unified districts or regional districts into which the portions of the county district are merged. A unified district or a regional district which has all or a portion of a county district minimum subvention transferred to it under this section may not also receive subventions under the per capita provisions of Sections 32150 and 32151. A subvention made pursuant to Section 32153 shall preclude subvention under this section and Sections 32150 and 32151.

Comment. Section 32155 continues subdivision (c) of former Health and Safety Code Section 39802 without substantive change.

☞ **Staff Note.** It may be possible to simplify the cross-references in this section. The staff will examine this further before the next draft of this part.

§ 32156. Increase due to inflation

32156. The per capita limits in Sections 32151 and 32153 and the forty-five thousand dollars (\$45,000) limit in Section 32154 may be increased by the state board to reflect the effects of inflation on the moneys needed to carry out air pollution control programs. No increase shall be made without the prior written approval of the Director of Finance.

Comment. Section 32156 continues former Health and Safety Code Section 39805 without substantive change.

§ 32157. Supplemental subventions

32157. Any moneys not otherwise subvented or allocated by the state board pursuant to this chapter may be used for supplemental subventions, upon application, up to a one-to-one matching basis or, in the state board's discretion, for any other purpose related to the control of nonvehicular sources. Matching supplemental subventions having unusual merit shall be given preference over expenditures for other purposes. In making supplemental subventions, the state board may consider federal grants received by the applicant and by other districts.

Comment. Section 32157 continues former Health and Safety Code Section 39810 without change.

§ 32158. Federal aid

32158. The subvention otherwise due a district may be reduced by the state board up to an amount equal to the funds which are granted to the district by the federal government. In so reducing a subvention, the state board shall take into account all the following factors:

- (a) The purpose for which the federal funds were granted.
- (b) The needs of the district in relationship to the needs of other districts.
- (c) Any special and worthy programs conducted by the district not required by the plan or program approved by the state board pursuant to Sections 41500 and 41603 of the Health and Safety Code.
- (d) The severity of air pollution within the district.
- (e) Any other factors which the state board reasonably determines should be considered.

Comment. Section 32158 continues former Health and Safety Code Section 39807 without substantive change.

☞ **Staff Note.** This section refers to sections of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

Article 3. Review of Subventions

§ 32200. Program requirement

32200. (a) Money shall be subvended pursuant to this chapter to districts engaged in the reduction of air contaminants pursuant to the basinwide air pollution control plan and related implementation programs.

(b) When the state board finds, pursuant to a resolution from the district board, or upon completion of proceedings conducted by the state board pursuant to Sections 32202 and Section 41500 of the Health and Safety Code, that the district is not so engaged in the reduction of air contaminants, the subvention, or a portion thereof, which would have been allocated to such district pursuant to Section 32150, 32151, 32153, 32154, or 32155, plus such additional sum as may be necessary, if moneys are available from appropriations for the purposes of this chapter, shall be allocated to the state board itself to carry out the approved plan or program.

(c) The findings of the state board shall be based on criteria established by the state board jointly with the districts for the evaluation of such plans and programs. The criteria shall be less stringent for rural districts, shall be based upon the differences in urban and rural air quality problems, population, and available resources, and shall recognize the transport of air pollutants from metropolitan areas to rural areas.

(e) If the state board acts under this section pursuant to a resolution of the district board, it may do so without proceeding under Sections 32202 and Section 41500 of the Health and Safety Code.

Comment. Section 32200 continues former Health and Safety Code Section 39806 without substantive change.

☞ **Staff Note.** This section refers to a section of the Health and Safety Code that will be included in a later part of this division. For now, this reference has not been changed. It will be corrected after a complete draft of this division has been prepared.

§ 32201. Review of programs and expenditures

32201. The state board may review, as it deems necessary, the programs and expenditures by each district receiving a subvention under this chapter to ascertain that the funds budgeted from nonstate sources are in fact being expended substantially in accordance with the budget on which the subvention was based. Where the state board

finds that the funds are not being so expended, the state board may, after a public hearing held pursuant to Section 32202 do any of the following:

- (a) Cease any further payments under the subvention.
- (b) Withhold future subventions.
- (c) Bring an action against the district, or the counties or cities supporting the district, to recover the subvention paid that fiscal year.
- (d) Assume the powers of the district after it has held a public hearing upon a 45-day written notice given to the basinwide air pollution control council, if there is such a council, and to the affected districts.

Comment. Section 32201 continues former Health and Safety Code Section 39808 without substantive change.

§ 32202. Review procedure

32202. (a) Before taking any action pursuant to Sections 32200 and 32201, the state board shall hold a public hearing within the air basin affected, upon a 45-day written notice given to the basinwide air pollution control council, if any, the affected districts, the affected air quality planning agencies, and the public.

(b) In addition to any other statutory requirements, interested persons shall have the right, at the public hearing to present oral and written evidence and to question and solicit testimony of qualified representatives of the state board on the matter being considered. The state board may, at the public hearing, place reasonable limits on the right to question and solicit testimony.

(c) If, after conducting the public hearing required by subdivision (a), the state board determines to take action pursuant to any section enumerated in subdivision (a), the state board shall, based on the record of the public hearing, adopt written findings which explain the action to be taken by the state board, why the state board decided to take the action, and why the action is authorized by, and meets the requirements of, the statutory provisions pursuant to which it was taken. In addition, the findings shall address the significant issues raised or written evidence presented by interested persons or the staff of the state board. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the state board.

(d) Subdivisions (a), (b), and (c) shall be applicable to the executive officer of the state board acting pursuant to Section 31107, or to the executive officer's delegates acting pursuant to Section 31108, with respect to any action taken pursuant to any section enumerated in subdivision (a).

Comment. Section 32202 continues former Health and Safety Code Section 39806.5 without substantive change.

CHAPTER 7. ACID DEPOSITION

§ 32300. Short title

32300. This chapter shall be known and may be cited as the Atmospheric Acidity Protection Act of 1988.

Comment. Section 32300 continues former Health and Safety Code Section 39900 without change.

§ 32301. Legislative findings and declarations

32301. The Legislature finds and declares that the deposition of atmospheric acidity resulting from other than natural sources is occurring in various regions of California, and that the continued deposition of this acidity, alone or in combination with other man-made pollutants and naturally occurring phenomena, could have potentially significant adverse effects on public health, the environment, and the economy.

Comment. Section 32301 continues former Health and Safety Code Section 39901 without change.

§ 32302. Further findings and declarations

32302. The Legislature further finds and declares that the State Air Resources Board has recently completed a multiyear acid deposition research and monitoring program under the Kapiloff Acid Deposition Act and that the research findings of the state board support the following conclusions with respect to the nature of the problem of deposition of acidity from the atmosphere in California:

(a) Acid atmospheres, in the form of fogs, and dry gases and particles, are found in areas where large numbers of people live and work, and, in many heavily populated areas of California, fogs typically contain acids and acidifying substances that aggravate asthmatic symptoms and may have other adverse health effects.

(b) Acid rain occurs in California in a pattern which generally reflects the spatial distribution of man-made sources of sulfur and nitrogen precursors of acid deposition throughout the state, and can be as much as 100 to 300 times as acidic as rain that falls in unpolluted locations. The acidity of rainfall in the spring and summer can be as high in California as in the eastern United States.

(c) Dry acid deposition due to fog, gases, and particles produced in the atmosphere is relatively more important than wet deposition due to rain or snow in California. While nitric acid, formed in the atmosphere from emissions of nitrogen oxides and hydrocarbons, is a major constituent of atmospheric acidity in California, sulfuric acid accounts for a significant fraction of acidity within the state.

(d) Organisms in the food chain that supports sport fisheries in Sierra lakes and streams could be diminished by temporary exposures to highly acidic “pulses” during summer storms or snow melt.

(e) Forests adjacent to southern California and on the western slope of the Sierras receive significant exposure to acidity deposited from the atmosphere, and may be adversely affected by the acidity alone, or in combination with other pollutants. Forests may also be damaged indirectly through changes in soil chemistry and by increased susceptibility to insects and disease, as a result of stress on the forest ecosystem caused by the deposition of acidity.

(f) Agricultural crops, which are already known to suffer significant economic damage due to exposure to ozone, may suffer additional damage from exposure to highly acidic fogs and other forms of acid deposition.

(g) Damage to materials such as painted surfaces and treated metals from exposure to high levels of acidity causes significant economic losses in parts of the state.

Comment. Section 32302 continues former Health and Safety Code Section 39902 without change.

§ 32303. Purpose of program

32303. The Legislature declares that it is the purpose of the program established by this chapter to do all of the following:

(a) Determine the extent to which atmospheric acidity, alone or in combination with other pollutants, adversely affects public health, and the levels and duration of exposure at which those effects may be expected to occur.

(b) Document the long-term trends of all forms of atmospheric acidity deposited in California, the trends in lake and stream chemistry of sensitive watersheds, the quantity and chemical composition of acidic deposition, and the cumulative potential for damage to aquatic and terrestrial ecosystems.

(c) Develop techniques for the early detection of changes in aquatic and terrestrial ecosystems, including the chemistry of soils, which could be expected to precede ecosystem damage due to the deposition of atmospheric acidity, based on the latest scientific research, both in the United States as well as in other countries where the deposition of acidity has caused environmental damage.

(d) Determine the relationship between ambient concentrations of acidity and particles, and variations in atmospheric deposition rates; the relationship between sources of acidic pollutants and the deposition of atmospheric acidity at receptor areas; and the extent of transport and deposition of acid pollutants to mountainous areas and high-elevation watersheds.

(e) Estimate potential economic losses which may be expected to result from the long-term effects of atmospheric acidity, including, but not limited to, impacts on health, worker productivity, materials, fisheries, forests, recreation, and agriculture.

(f) Develop and adopt standards, to the extent supportable by scientific data, at levels which are necessary and appropriate to protect public health and sensitive ecosystems from adverse effects resulting from atmospheric acidity.

Comment. Section 32303 continues former Health and Safety Code Section 39903 without change.

§ 32304. Atmospheric Acidity Protection Program

32304. (a) The state board shall adopt and implement an Atmospheric Acidity Protection Program (AAPP), to determine the nature and extent of potential damage to public health and the state's ecosystem which may be expected to result from atmospheric acidity, and to develop measures which may be needed for the protection of public health and sensitive ecosystems within the state.

(b) The program shall commence upon the final compilation of information obtained pursuant to the former Kapiloff Acid Deposition Act shall incorporate the research results and assessments undertaken pursuant to that act, and shall endeavor to acquire the latest available information on the chemical and biological processes in sensitive ecosystems which preceded the acidification of lakes and streams in other parts of the world.

(c) The Scientific Advisory Committee on Acid Deposition, appointed pursuant to the Kapiloff Acid Deposition Act is continued in existence, and shall actively assist the state board in the development and implementation of the Atmospheric Acidity Protection Program.

Comment. Section 32304 continues former Health and Safety Code Section 39904 without change.

§ 32305. Studies and assessments

32305. In developing the health and ecosystem protection program the state board shall, at a minimum:

(a) Determine the effects of acidic atmospheres on sensitive populations, and the health consequences of prolonged exposure to acidic atmospheres.

(b) Conduct clinical and epidemiological studies to assess the effects on human health of acidic aerosols and fogs in combination with other pollutants.

(c) Analyze data from ongoing acid deposition monitoring programs operated by the state board and the local air pollution control districts, and relate the data to monitored changes in the chemistry of sensitive soils and bodies of water, and results from field exposure studies of economically significant materials.

(d) Characterize major source-receptor links for the deposition of atmospheric acidity using the best available scientific analysis and techniques, and the potential effects on long-term acid deposition trends of current and future air pollution control measures within the state.

(e) Conduct other studies or assessments as needed to carry out the purposes of this chapter.

Comment. Section 32305 continues former Health and Safety Code Section 39905 without change.

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CONFORMING REVISIONS

Code Civ. Proc. § 338 (amended). Three year limitation period

SEC. ____ . Section 338 of the Code of Civil Procedure is amended to read:

338. Within three years:

- (a) An action upon a liability created by statute, other than a penalty or forfeiture.
- (b) An action for trespass upon or injury to real property.
- (c) An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. The cause of action in the case of theft, as defined in Section 484 of the Penal Code, of any article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency which originally investigated the theft.
- (d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.
- (e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not to be deemed to have accrued until the discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action upon the bond.
- (f) An action against a notary public on his or her bond or in his or her official capacity except that any cause of action based on malfeasance or misfeasance is not deemed to have accrued until discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action; provided, that any action based on malfeasance or misfeasance shall be commenced within one year from discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action or within three years from the performance of the notarial act giving rise to the action, whichever is later; and provided further, that any action against a notary public on his or her bond or in his or her official capacity shall be commenced within six years.
- (g) An action for slander of title to real property.
- (h) An action commenced under Section 17536 of the Business and Professions Code. The cause of action in that case shall not be deemed to have accrued until the discovery by the aggrieved party, the Attorney General, the district attorney, the county counsel, the city prosecutor, or the city attorney of the facts constituting grounds for commencing such an action.
- (i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.
- (j) An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution.
- (k) An action commenced under Division ~~26~~ 4 (commencing with Section ~~39000~~ 30000) of the ~~Health and Safety Environment~~ Code. These causes of action shall not be deemed to have accrued until the discovery by the State Air Resources Board or by a district, as defined in Section ~~39025~~ 30220 of the ~~Health and Safety Environment~~ Code, of the facts constituting grounds for commencing the action under its jurisdiction.

(l) An action commenced under Section 1603.1 or 5650.1 of the Fish and Game Code. These causes of action shall not be deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

Comment. Section 338 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with Section 39000) of the Health and Safety Code and former Health and Safety Code Section 30925.

Food & Agric. Code § 14023 (amended). Reports

SEC. ____ . Section 14023 of the Food and Agricultural Code is amended to read:

14023. (a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and with the participation of the Office of Environmental Health Hazard Assessment, prepare a report on the health effects of the pesticide which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall include the findings of the office. The report shall be made available to the public, subject to subdivision (d) of Section 14022.

(b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the scientific review panel established according to ~~Section 39670 of the Health and Safety Code Article 6 (commencing with Section 31850) of Chapter 4 of Part 2 of Division 4 of the Environment Code~~. The director shall also make available the data deemed necessary to the scientific review panel, according to departmental procedures established to ensure confidentiality of proprietary information. The panel shall review, as appropriate, the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based. The panel shall submit its written findings to the director within 45 days after receiving the report, but it may petition the director for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the director who shall revise and resubmit the report, within 30 days following receipt of the panel's determination, to the panel prior to development of emission control measures.

(d) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (b), the director shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant. After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall list, by regulation, pesticides determined to be toxic air contaminants.

(e) The director shall determine, in consultation with the office, the State Air Resources Board, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant pursuant to subdivision (d). Any person may submit written information for consideration by the director in making determinations on control measures.

Comment. Section 14023 is amended to substitute reference to the Environment Code provisions that replaced former Health and Safety Code Section 39670.

Gov't Code § 7550.5 (amended). Reports to Legislature or Governor

☞ **Staff Note.** Government Code Section 7550.5 contains a reference to Section 39604 of the Health and Safety Code. This reference must be replaced with a reference to Section 31205 of the Environment Code. However, the conforming revisions to the staff draft of Division 2 of the Environment Code has already set this section out in order to make other conforming amendments. See Memorandum 98-20. The reference will be corrected with Divisions 2 and 4 are conformed.

Gov't Code § 65089.1 (amended). Agency requirements for employer plans

SEC. _____. Section 65089.1 of the Government Code is amended to read:

65089.1 (a) For purposes of this section, “plan” means a trip reduction plan or a related or similar proposal submitted by an employer to a local public agency for adoption or approval that is designed to facilitate employee ridesharing, the use of public transit, and other means of travel that do not employ a single-occupant vehicle.

(b) An agency may require an employer to provide rideshare data bases; an emergency ride program; a preferential parking program; a transportation information program; a parking cash-out program, as defined in subdivision (f) of Section 65088.1; a public transit subsidy in an amount to be determined by the employer; bicycle parking areas; and other noncash value programs which encourage or facilitate the use of alternatives to driving alone. An employer may offer, but no agency shall require an employer to offer, cash, prizes, or items with cash value to employees to encourage participation in a trip reduction program as a condition of approving a plan.

(c) Employers shall provide employees reasonable notice of the content of a proposed plan and shall provide the employees an opportunity to comment prior to submittal of the plan to the agency for adoption.

(d) Each agency shall modify existing programs to conform to this section not later than June 30, 1995. Any plan adopted by an agency prior to January 1, 1994, shall remain in effect until adoption by the agency of a modified plan pursuant to this section.

(e) Employers may include disincentives in their plans that do not create a widespread and substantial disproportionate impact on ethnic or racial minorities, women, or low-income or disabled employees.

(f) This section shall not be interpreted to relieve any employer of the responsibility to prepare a plan that conforms with trip reduction goals specified in Division 26 4 (commencing with Section 39000 30000) of the ~~Health and Safety~~ Environment Code, or the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) This section only applies to agencies and employers within the South Coast Air Quality Management District.

Comment. Section 65089.1 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with Section 39000) of the Health and Safety Code.

Gov't Code § 65963.1 (amended). Application of chapter

SEC. _____. Section 65963.1 of the Government Code is amended to read:

65963.1. Except as otherwise provided in Article 8.7 (commencing with Section 25199) of Chapter 6.5 of Division 20 of the Health and Safety Code, this chapter applies to the

making of a land use decision or the issuance of a permit for a hazardous waste facility project by a public agency, as defined in Section 25199.1 of the Health and Safety Code, including, but not limited to, all of the following actions:

(a) The approval of land use permits and conditional use permits, the granting of variances, the subdivision of property, and the modification of existing property lines pursuant to this division or Division 2 (commencing with Section 66410) of Title 7, and, for purposes of this chapter, "project" includes an activity requiring any of those actions.

(b) The issuance of hazardous waste facility permits by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(c) The issuance of waste discharge requirements by California regional water quality control boards pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(d) The issuance of authority to construct permits by the district board of an air pollution control district or an air quality management district pursuant to Division ~~26~~ 4 (commencing with Section ~~39000~~ 30000) of the ~~Health and Safety~~ Environment Code.

(e) The issuance of solid waste facilities permits by the enforcement agency pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3.

Comment. Section 65963.1 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with Section 39000) of the Health and Safety Code.

Health & Safety Code § 25149 (amended). Regulation of hazardous waste facilities

SEC. _____. Section 25149 of the Health and Safety Code is amended to read:

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.

(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section ~~39655~~ 31675 of the Health and Safety Code.

(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.

(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, which are developed after considering the suggestions on study design and methodology made by interested parties and which are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the department before beginning the study.

(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 which requires one or both of the following:

(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.

(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.

(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign an administrative law judge to conduct the hearing, pursuant to this subdivision.

(1) After an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign an administrative law judge to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11511 to 11515, inclusive, of, the Government Code. The administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.

(3) The director may adopt the proposed decision of the administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.

Comment. Section 25149 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39655(a).

Health & Safety Code § 25199.1 (amended). Definitions

SEC. _____. Section 25199.1 of the Health and Safety Code is amended to read:

25199.1. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Appeal board" means an appeal board established pursuant to Section 25199.10.

(b) "Hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new hazardous waste facility that will require a hazardous waste facilities permit issued pursuant to Section 25200, or for the purpose of significantly expanding or modifying an existing hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5. Unless expressly provided otherwise, "hazardous waste facility project" includes a specified hazardous waste facility project.

(c) "Interested person" means a person who participated in one or more public meetings or hearings held to consider an application for a land use decision for a specified hazardous waste facility project. "Participation" includes, but is not limited to, the giving of oral or written testimony at a meeting or hearing, submission of questions at a meeting or hearing, or attendance at the meeting or hearing.

(d) "Land disposal facility" means a hazardous waste facility where hazardous waste is disposed in, on, under, or to the land.

(e) "Land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, including the issuance of a land use permit or a conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(f) "Lead agency" means the public agency that has the principal responsibility for approving a hazardous waste facility project.

(g) "Local agency" means any public agency, other than a state agency.

(h) "Permit" means a permit, license, certificate, requirement, or other entitlement for use required to site or construct a hazardous waste facility. "Permit" includes, but is not limited to, all of the following:

(1) A hazardous waste facility permit issued by the department pursuant to this chapter.

(2) Waste discharge requirements issued by a California regional water quality control board pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(3) An authority to construct permit issued by an air pollution control district or air quality management district pursuant to Division 26 4 (commencing with Section 39000 30000) of the Environment Code.

(4) A solid waste facilities permit issued by the enforcement agency pursuant to ~~Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government Code~~ Article 1 (commencing with Section 44000) of Chapter 3 of Part 4 of Division 30 of the Public Resources Code.

(i) "Proponent" means any person applying to a public agency for a permit or a land use decision concerning a specified hazardous waste facility project.

(j) "Public agency" means any state agency or any local agency.

(k) "Responsible agency" means any public agency, other than the lead agency, which has the authority to issue a permit or make a land use decision.

(l) "Significantly expand or modify" means to expand or modify an existing hazardous waste facility, including a specified hazardous waste facility, in a manner so that a land use decision and an environmental impact report are required.

(m) "Specified hazardous waste facility" means an offsite facility which serves more than one producer of hazardous waste.

(n) "Specified hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new specified hazardous waste facility or for the purpose of significantly expanding or modifying an existing specified hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5.

(o) "State agency" means any agency, board, or commission of state government. "State agency" also includes an air pollution control district and an air quality management district.

(p) "Technical review" means the review of an application for a hazardous waste facility project by a state agency to determine if the facility meets the applicable statutes and regulations.

Comment. Section 25199.1(h)(3) is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with section 39000).

Section 25199.1(h)(4) is amended to substitute reference to the Public Resources Code provisions that replaced former Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government Code.

☞ **Staff Note.** The change in paragraph (4) of subdivision (h) corrects an obsolete reference unrelated to air quality regulation. Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government Code was repealed in 1989 and continued with some substantive changes in Article 1 (commencing with Section 44000) of Chapter 3 of Part 4 of Division 30 of the Public Resources Code. See 1989 Cal. Stat. ch. 1095, §§ 6 & 22.

Health & Safety Code § 25533 (amended). Accidental release prevention program

SEC. _____. Section 25533 of the Health and Safety Code is amended to read:

25533. (a) The program for prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)), with the additional provisions specified in this article, is the accidental release prevention program for the state. The program shall be implemented by the office and the appropriate administering agency in each city or county. The state's implementation of the federal program adopted by the Environmental Protection Agency is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding this article or Division 26 ~~4~~ (commencing with Section 39000 ~~30000~~) of the Environment Code, the accidental release prevention program submitted by the office to the Environmental Protection Agency to receive delegation of federal authority to implement the federal program shall include only those regulated substances and threshold quantities specified in the regulations adopted by the Environmental Protection Agency.

(b) The office and the administering agency shall, to the maximum extent feasible, coordinate implementation of the accidental release prevention program with the federal Chemical Safety and Hazard Investigation Board, the Emergency Response Commission and local emergency planning committees, the unified program elements specified in subdivision (c) of Section 25404, the permitting programs implemented by the air quality management districts and air pollution control districts pursuant to Title V of the Clean Air Act (42 U.S.C. Section 7661 et seq.), and with other agencies, as specified in Section 25404.2.

(c) Section 39602 31203 of the Environment Code does not apply to the accidental release prevention program promulgated and implemented pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)).

(d) The administering agency in each jurisdiction is the agency designated to implement and enforce any requirements specified by the Environmental Protection Agency and pertaining to any of the following:

(1) Verification of stationary source registration and submission of an RMP or revised RMP.

(2) Verification of source submission of stationary certifications or compliance schedules.

(3) Mechanisms for ensuring that stationary sources permitted pursuant to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) are in compliance with the requirements of this article.

(e) Notwithstanding subdivision (d) and paragraph (2) of subdivision (a) of Section 25404.1, if, after a public hearing, the office determines that an administering agency is not taking reasonable actions to enforce the statutory provisions and regulations pertaining to accidental releases of regulated substances, the office may exercise any of the powers of that administering agency as necessary to implement this article.

(f) Notwithstanding any other provision of law, at any time there is no local agency certified to implement in a city or unincorporated portion of a county the unified program established pursuant to Chapter 6.11 (commencing with Section 25404), the office shall do one of the following:

(1) Authorize the administering agency which implemented this article in the city or county as of December 31, 1993, to continue to implement this article until such time as a local agency is certified to implement the unified program.

(2) Assume authority and responsibility to implement this article in that city or county until a local agency is certified to implement the unified program, in which case all references in this article to the administering agency shall be deemed to refer to the office.

Comment. Section 25533 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with section 39000) and former Section 39602.

Health & Safety Code § 25548.4 (amended). Limitations of chapter

SEC. _____. Section 25548.4 of the Health and Safety Code is amended to read:

25548.4. This chapter does not do any of the following:

(a) Affect any rights, defenses, or immunities that are available to any lender or fiduciary under any applicable law.

(b) Create any liability for any lender or fiduciary.

(c) Create any private right of action against any lender or fiduciary.

(d) Exempt or excuse a lender or fiduciary who operates or directs the operation, or maintains the operation, of the property from compliance with the operational requirements of applicable laws. Those operational requirements include, but are not limited to, permitting, reporting, monitoring, emission limitation, corrective action, financial responsibility and assurance requirements, requirements to take removal or remedial action to respond to a release or threatened release of hazardous materials caused by the lender or fiduciary and the requirements of Division 26 4 (commencing with Section 39000 30000) of ~~this code~~ of the Environment Code or of Division 7 (commencing with Section 13000) of the Water Code. Operational requirements include the payment of fees, fines, and penalties, and compliance with any other enforcement provisions that are applicable as a

result of the operation, or the direction of the operation, or the maintenance of the operation, of the property by the lender or fiduciary.

(e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of Division 9 of the Probate Code.

(f) Affect any liabilities of a fiduciary estate.

(g) Exempt a lender from liability imposed by Chapter 6.8 (commencing with Section 25300) for a removal or remedial action or the recovery of damages relating to a release or threatened release of hazardous material, to the extent that the lender is a responsible party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or (4)).

(h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5 (commencing with Section 25100).

(i) Exempt or excuse a lender from liability under any state or local statute, regulation, or ordinance for a known or suspected release or known or suspected threatened release of hazardous materials caused by events or conditions occurring prior to foreclosure or its equivalent, unless, after taking possession of the property, the lender promptly takes each of the following actions in accordance with applicable law:

(1) Suspends operations with respect to that portion of the property where the known or suspected release or known or suspected threatened release occurred or may occur.

(2) Removes from the suspended operations and affected areas on the property, all hazardous material not released into the environment and secures the suspended operations.

(3) Reports any known or suspected releases of hazardous material.

(j) Limit the application or enforcement of Section 25359.4 or 25359.5 or other state or local fencing, posting, securing, notification, or reporting laws with regard to property that is acquired by a lender through foreclosure or its equivalent, to the extent that those requirements are otherwise applicable to the property.

(k) Exempt a lender from compliance with an administrative order requiring immediate and temporary measures to prevent, abate, or minimize an emergency caused by a release or threatened release of hazardous material at, from, or in connection with, any property that has been acquired by the lender through foreclosure or its equivalent, when all of the following circumstances exist:

(1) The release or threatened release presents an imminent and substantial endangerment to the public health or welfare or the environment.

(2) No other person who is viable and potentially responsible for the release or threatened release has been identified and located by the agency issuing the order, following a reasonable effort by the agency to identify and locate any such person.

(3) The costs and expenses incurred by the lender to comply with the administrative order do not exceed twenty-five thousand dollars (\$25,000).

(4) If the lender complies with the administrative order, the compliance would not, in and of itself, subject the lender to liability for a removal or remedial action or damages, fines, penalties, impositions, or assessments relating to the release or threatened release under any federal law.

(l)(1) Exempt a lender who has acquired title to property through foreclosure or its equivalent from operation and maintenance requirements that were established on the property as a result of a removal or remedial action conducted on the property.

(2) "Operation and maintenance requirements" include, but are not limited to, deed restrictions and requirements to maintain passive exposure controls and to perform monitoring. If there are requirements other than operation and maintenance requirements,

which are applicable to the property to maintain the effectiveness of the removal or remediation action, the lender shall comply with those requirements unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency that it does not intend to comply with the requirements and the agency concurs.

(m) Require a lender to conduct, or require a lender to direct the taking of, an inspection of the property after foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on, or affected by, the lender not conducting, or not requiring, an inspection of the property after foreclosure or its equivalent.

(n) Require a fiduciary to conduct or require an inspection of the property in a fiduciary estate to qualify for the exemption provided by this chapter and the liability of the fiduciary shall not be based on, or affected by, the fiduciary not conducting or not requiring an inspection prior to holding the property as part of the fiduciary estate.

Comment. Section 25548.4 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with section 39000).

Health & Safety Code §§ 39000-44474 (repealed). Air Resources

SEC. _____. Division 26 (commencing with Section 39000) of the Health and Safety Code is repealed.

<p>☞ Staff Note. There are several sections of later parts of Division 26 (commencing with Section 39000) of the Health and Safety Code (Air Resources) that refer to sections that have been included in Parts 1 and 2 of Division 4 of the proposed Environment Code. See Health & Safety Code §§ 41502, 43013.2, 40440.1, 40440.2, 40500.5, 40510, 40709.6, 40715, 40727.2, 40911, 40912, 40914, 40918.5, 40918.6, 40920.6, 40921.5, 40923, 40924, 40925.5, 41500, 41804.5, 41865, 42301.5, 42311, 42315, 42400.6, 42402, 42403, 42700, 43845, 44321, 44342, 44360, 44364, 44391. Conforming changes to these cross-references are not included here. These changes will be made later, when provisions continuing these sections are drafted in later parts of the Air Resources division of the proposed Environment Code.</p>
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Health & Safety Code § 101085 (amended). Health emergencies

SEC. _____. Section 101085 of the Health and Safety Code is amended to read:

101085. (a) After the declaration of a health emergency or a county health emergency pursuant to Section 101080, the director or local health officer may do any or all of the following:

(1) Require any person or organization that the director or local health officer shall specify to furnish any information known relating to the properties, reactions, and identity of the material that has been released, spilled, or escaped. The director or local health officer may require information to be furnished, under penalty of perjury, by the person, company, corporation, or other organization that had custody of the material, and, if the material is being transferred or transported, by any person, company, corporation, or organization that caused the material to be transferred or transported. This information shall be furnished to the director or local health officer upon request in sufficient detail, as determined by the director or local health officer, as required to take any action necessary to abate the health emergency or county health emergency or protect the health of persons in the county, or any area thereof, who are, or may be affected. However, the burden, including costs, of furnishing the information shall bear a reasonable relationship to the need for the information and the benefits to be obtained therefrom.

(2) Provide the information, or any necessary portions thereof, or any other necessary information available to the director or local health officer to state or local agencies responding to the health emergency or county health emergency or to medical and other professional personnel treating victims of the local health emergency.

(3) Sample, analyze, or otherwise determine the identifying and other technical information relating to the health emergency or county health emergency as necessary to respond to or abate the county health emergency and protect the public health.

(b) This section does not limit or abridge any of the powers or duties granted to the State Water Resources Control Board and to each regional water quality control board by Division 7 (commencing with Section 13000) of the Water Code. This section also does not limit or abridge the powers or duties granted to the State Air Resources Board or to any air pollution control district by Division 26 4 (commencing with Section 39000 30000) of the Environment Code.

This section does not limit or abridge any of the powers or duties granted to the Director of Food and Agriculture or to any county agricultural commissioner by Division 6 (commencing with Section 11401) or by Division 7 (commencing with Section 12501) of the Food and Agricultural Code.

Comment. Section 101085 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with section 39000).

Pub. Res. Code § 21080.24 (amended). Application of law

SEC. _____. Section 21080.24 of the Public Resources Code is amended to read:

21080.24. (a) This division does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section ~~39053.3~~ 30455 of the ~~Health and Safety Environment~~ Code, or pursuant to a district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

(b) Nothing in this section is intended to result in the application of this division to any physical or operational change which, prior to January 1, 1995, was not subject to this division.

Comment. Section 21080.24 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39053.3.

Pub. Res. Code § 21159.4 (amended). Application

SEC. _____. Section 21159.4 of the Public Resources Code is amended to read:

21159.4. This article shall apply to the following agencies: the State Air Resources Board, any district as defined in Section ~~39025~~ 30220 of the ~~Health and Safety Environment~~ Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.

Comment. Section 21159.4 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39025.

Pub. Res. Code § 25523 (amended). Written decision

SEC. _____. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d)(1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission shall not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant prior to the commission's licensing of the project, to the extent that the proposed facility requires emission offsets to comply with local, regional, state, or federal air quality standards.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) Findings regarding the conformity of the proposed facility with the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 or, where applicable, findings pursuant to Section 25523.5 regarding the conformity of a competitive solicitation for new generation resources with the integrated assessment of need for new resource additions determined pursuant to subdivisions (a) to (f), inclusive, of Section 25305 and adopted pursuant to Section 25308 that was in effect at the time that the solicitation was developed.

(g) In the case of a geothermal site and related facility, findings on whether there are sufficient commercial quantities of geothermal resources available to operate the proposed facility for its planned life.

(h) In the case of a site and related facility using resource recovery (waste- to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(i) In the case of a facility, other than a resource recovery facility subject to subdivision (h), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to ~~subdivision (d) of Section 39666~~ Section 31803 of the Environment Code or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

Comment. Section 25523 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39666(d).

Pub. Res. § 40055 (amended). Authority of state agencies;

SEC. ____ . Section 40055 of the Public Resources Code is amended to read:

40055. (a) This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer, including, but not limited to, the exercise by the state water board or the regional water boards of any of their powers and duties pursuant to Division 7 (commencing with Section 13000) of the Water Code, the exercise by the Department of Toxic Substances Control of any of its powers and duties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the exercise by the State Air Resources Board or any air pollution control district or air quality management district of any of its powers and duties pursuant to Division 26 4 (commencing with Section ~~39000~~ 30000) of the ~~Health and Safety~~ Environment Code.

(b) The exercise of authority under this division, including, but not limited to, the adoption of regulations, plans, permits, or standards or the taking of any enforcement actions shall not duplicate or be in conflict with any determination relating to water quality control made by the state water board or regional water boards, including requirements in regulations adopted by or under the authority of the state water board.

(c) Any plans, permits, standards, or corrective action taken under this division shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7, of the Water Code and the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the action or proposed action.

Comment. Section 40055 is amended to substitute reference to the Environment Code provisions that replaced former Division 26 (commencing with Section 39000) of the Health and Safety Code.

Pub. Res. Code § 71011 (amended). Environmental agency

☞ **Staff Note.** Public Resources Code Section 71011 contains a reference to Section 39025 of the Health and Safety Code. This reference must be replaced with a reference to Section 30220 of the Environment Code. However, the staff draft of Division 2 of the Environment Code repealed Section 71011 and continued its substance in Section 10120 of the Environment Code. See Memorandum 98-20. The reference correction will be made in the next draft of Division 2.

Sts. & Hy. Code § 2580 (amended). Loans

SEC. _____. Section 2580 of the Streets and Highways Code is amended to read:

2580. (a) The Department of Transportation may make loans to other state agencies for the purpose of purchasing vanpool vehicles, as defined by subdivision (b) of Section 2570, for state employee vanpooling. The purchased vehicles, to the extent practicable, shall be either "low-emission vehicles," as defined by Section 39037.05 30300 of the ~~Health and Safety~~ Environment Code, or "alternative fuel vehicles," which are either of the following:

(1) An original equipment manufactured vehicle capable of operating on a nonpetroleum-based alternative fuel such as electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, or natural gas and that has demonstrated to the satisfaction of the State Air Resources Board the ability to meet applicable California emission standards.

(2) A vehicle that has been converted to use a nonpetroleum-based alternative fuel such as electricity, ethanol, hydrogen, liquefied petroleum gas, methanol, or natural gas through the installation of an alternative fuel retrofit system that has been certified by the State Air Resources Board.

(b) The department shall establish criteria and adopt guidelines for making the loans and for the purchase of vanpool vehicles, including, but not limited to, requirements on the type of vehicles authorized for purchase, areas within the state eligible for the vehicles' operation, types of routes for the vehicles' operation, and agencies which are authorized to participate in the program. State agencies may submit loan applications to the department for approval. State agencies receiving loans and purchasing vehicles pursuant to this section shall be responsible for all of the following:

(1) Operational responsibilities for the vehicles, including, but not limited to, vehicle maintenance and repair.

(2) Administration of departmental rideshare programs, including, but not limited to, ridership development and retention.

(3) Compliance with applicable state and federal laws and regulations, including driver and vehicle certification, licenses, and vehicle registration.

(4) Retaining title to vanpool vehicles purchased.

(5) Repayment of the loan for the purchase of the vanpool vehicle.

(c) An agency which receives a loan for the purchase of a vanpool vehicle pursuant to this section shall charge each employee participating in the vanpooling program a monthly fee in an amount determined by the agency. Proceeds of the fees shall be sufficient to fully reimburse the agency for repayment of the loan and for the operational cost of the vanpool vehicle. The operational cost includes, at a minimum, fuel, maintenance, and repairs. The agency shall maintain records to demonstrate that the vanpooling program which it operates is self-supporting.

(d) Funds for loans for purposes of this section shall be provided in the annual Budget Act.

Comment. Section 2580 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39037.05.

Veh. Code § 4000 (amended). Offstreet parking facility

SEC. _____. Section 4000 of the Vehicle Code is amended to read:

4000. (a)(1) No person shall drive, move, or leave standing upon a highway, or in an offstreet public parking facility, any motor vehicle, trailer, semitrailer, pole or pipe dolly, logging dolly, or auxiliary dolly unless it is registered and the appropriate fees have been paid under this code, except that an off-highway motor vehicle which displays an identification plate or device issued by the department pursuant to Section 38010 may be

driven, moved, or left standing in an offstreet public parking facility without being registered or paying registration fees.

(2) For purposes of this subdivision, "offstreet public parking facility" means either of the following:

(A) Any publicly owned parking facility.

(B) Any privately owned parking facility for which no fee for the privilege to park is charged and which is held open for the common public use of retail customers.

(3) This subdivision does not apply to any motor vehicle stored in a privately owned offstreet parking facility by, or with the express permission of, the owner of the privately owned offstreet parking facility.

(b) No person shall drive, move, or leave standing upon a highway any motor vehicle, as defined in Chapter 2 (~~commencing with Section 39010~~) of Part 1 of Division 26 of the Health and Safety Code Section 30330 of the Environment Code, which has been registered in violation of Part 5 (~~commencing with Section 43000~~) of that Division 26 of the Health and Safety Code.

(c) Subdivisions (a) and (b) do not apply to off-highway motor vehicles operated pursuant to Sections 38025 and 38026.5.

(d) This section does not apply, following payment of fees due for registration, during the time that registration and transfer is being withheld by the department pending the investigation of any use tax due under the Revenue and Taxation Code.

(e) Subdivision (a) does not apply to a vehicle that is towed by a tow truck on the order of a sheriff, marshal, or other official acting pursuant to a court order or on the order of a peace officer acting pursuant to this code.

(f) Subdivision (a) applies to a vehicle that is towed from a highway or off-street parking facility under the direction of a highway service organization when that organization is providing emergency roadside assistance to that vehicle. However, the operator of a tow truck providing that assistance to that vehicle is not responsible for the violation of subdivision (a) with respect to that vehicle. The owner of an unregistered vehicle that is disabled and located on private property, shall obtain a permit from the department pursuant to Section 4003 prior to having the vehicle towed on the highway.

(g) For purposes of this section, possession of a California driver's license by the registered owner of a vehicle shall give rise to a rebuttable presumption that the owner is a resident of California.

Comment. Section 4000 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39039.

Veh. Code § 4000.1 (amended). Certificate of compliance or noncompliance

SEC. _____. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (~~commencing with Section 43000~~) of Division 26 of the Health and Safety Code, and upon registration of a motor vehicle previously registered outside this state which is subject to those provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) With respect to new vehicles certified pursuant to Chapter 2 (~~commencing with Section 43100~~) of Part 5 of Division 26 of the Health and Safety Code, the department

shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010 ~~30100~~) of Part 1 of Division 26 ~~4~~ of the Health and Safety Environment Code shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) In any district in which biennial certification is required and a valid certificate was issued in connection with the most recent renewal of registration of the vehicle, and the transfer occurred not more than 60 days following the date by which that renewal of registration was required.

(2) The transferor is either the parent, grandparent, sibling, child, grandchild, or spouse of the transferee.

(3) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(4) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(5) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(6) Prior to January 1, 2003, the motor vehicle was manufactured prior to the 1974 model-year.

(7) Beginning January 1, 2003, the motor vehicle is 30 or more model-years old.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

(f) Subdivision (a) does not apply to a motor vehicle when an additional individual is added as a registered owner of the vehicle.

Comment. Section 4000.1 is amended to substitute reference to the Environment Code provisions that replaced former Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code.

Veh. Code § 4000.2 (amended). Out-of-state motor vehicles

SEC. ____ . Section 4000.2 of the Vehicle Code is amended to read:

4000.2. (a) Except as otherwise provided in subdivision (b) of Section 43654 of the Health and Safety Code, and, commencing on January 1, 1993, except for 1965 or earlier model-year motor vehicles, the department shall require upon registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, previously registered outside this state, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) For the purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010 ~~30100~~) of Part 1 of Division 26 ~~4~~ of the Health and Safety Environment Code shall control.

Comment. Section 4000.2 is amended to substitute reference to the Environment Code provisions that replaced former Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code.

Veh. Code § 24007 (amended). Responsibility of dealer or other person selling motor vehicle

SEC. _____. Section 24007 of the Vehicle Code is amended to read:

24007. (a)(1) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being legally wrecked or dismantled, or sold exclusively for off-highway use.

(2) Paragraph (1) does not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(b)(1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010 ~~30100~~) of Part 1 of Division 26 ~~4~~ of the ~~Health and Safety~~ Environment Code, subject to Part 5 (commencing with Section 43000) of ~~that Division 26 of the Health and Safety Code~~ which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(3) Paragraph (2) does not apply to any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1.

(4) Paragraphs (1) and (2) do not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or ~~or~~ a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(c)(1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

Comment. Section 24007 is amended to substitute reference to the Environment Code provisions that replaced former Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code.

Veh. Code § 24007.2 (amended). Low-income elderly persons

SEC. _____. Section 24007.2 of the Vehicle Code is amended to read:

24007.2. If a dealer, or a person holding a retail seller's permit, sells to an elderly low-income person, as defined in Section ~~39026.5~~ 30230 of the ~~Health and Safety Environment~~ Code, a 1966 through 1970 model year motor vehicle which is not equipped, as required pursuant to Sections 43654 and 43656 of that code, with a certified device to control its exhaust emission of oxides of nitrogen, the dealer or such person, as the case may be, shall install the required certified device on the motor vehicle without cost to the elderly low-income person.

Comment. Section 24007.2 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39026.5.

Veh. Code § 27156 (amended). Gross polluters; air pollution control devices; fines

SEC. _____. Section 27156 of the Vehicle Code is amended to read:

27156. (a) No person shall operate or leave standing upon any highway any motor vehicle which is a gross polluter, as defined in Section ~~39032.5~~ 30275 of the ~~Health and Safety Environment~~ Code.

(b) No person shall operate or leave standing upon any highway any motor vehicle which is required to be equipped with a motor vehicle pollution control device under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code or any other certified motor vehicle pollution control device required by any other state law or any rule or regulation adopted pursuant to that law, or required to be equipped with a motor vehicle pollution control device pursuant to the National Emission Standards Act (42 U.S.C. Secs. 1857f-1 to 1857f-7, inclusive) and the standards and regulations adopted pursuant to that federal act, unless the motor vehicle is equipped with the required motor vehicle pollution control device which is correctly installed and in operating condition. No person shall disconnect, modify, or alter any such required device.

(c) No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system.

(d) If the court finds that a person has willfully violated this section, the court shall impose the maximum fine that may be imposed in the case, and no part of the fine may be suspended.

(e) "Willfully," as used in this section, has the same meaning as the meaning of that word prescribed in Section 7 of the Penal Code.

(f) No person shall operate a vehicle after notice by a traffic officer that the vehicle is not equipped with the required certified motor vehicle pollution control device correctly installed in operating condition, except as may be necessary to return the vehicle to the residence or place of business of the owner or driver or to a garage, until the vehicle has been properly equipped with such a device.

(g) The notice to appear issued or complaint filed for a violation of this section shall require that the person to whom the notice to appear is issued or against whom the complaint is filed produce proof of correction pursuant to Section 40150 or proof of exemption pursuant to Section 4000.1 or 4000.2.

(h) This section shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board to do either of the following:

(1) Not to reduce the effectiveness of any required motor vehicle pollution control device.

(2) To result in emissions from any such modified or altered vehicle which are at levels which comply with existing state or federal standards for that model year of the vehicle being modified or converted.

(i) This section applies to motor vehicles of the United States or its agencies, to the extent authorized by federal law.

Comment. Section 27156 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39032.5.

Veh. Code § 28113 (amended). Low-emission vehicle requirements

SEC. _____. Section 28113 of the Vehicle Code is amended to read:

28113. (a) Every light-duty and medium-duty motor vehicle operated for compensation to transport persons in an air quality management district or air pollution control district, which does not meet all applicable state ambient air quality standards, shall be a low-emission vehicle, as defined by regulation of the State Air Resources Board. If the vehicle is capable of operating on more than one fuel, it shall be operated within any nonattainment area to the maximum extent practicable either on the designated clean fuel on which the low-emission vehicle was certified or on any other fuel designated by the State Air Resources Board as a substitute fuel for the designated clean fuel. Any air quality management district or air pollution control district may adopt regulations for the enforcement of this section which are consistent with regulations of the State Air Resources Board.

(b) As used in this section, “motor vehicle operated for compensation to transport persons” includes a taxi cab, bus, airport shuttle vehicle, transit authority or transit district vehicle, or a vehicle owned by a private entity providing transit service under contract with a transit district or transportation authority.

(c) As used in this section, “light-duty” has the same meaning as defined in Section 39035 30290 of the ~~Health and Safety~~ Environment Code.

(d) As used in this section, “medium-duty” has the same meaning as defined in Section 39037.5 30310 of the ~~Health and Safety~~ Environment Code.

(e) This section applies to all new light-duty motor vehicles purchased on or after January 1, 1997, and to all new medium-duty vehicles purchased on or after January 1, 1998.

Comment. Section 28113 is amended to substitute reference to the Environment Code provisions that replaced former Health and Safety Code Sections 39035 and 39037.5.

Veh. Code § 28114 (amended). Heavy-duty vehicles operated by transit authority

SEC. _____. Section 28114 of the Vehicle Code is amended to read:

28114. (a) Every heavy-duty vehicle operated by a transit authority or transit district, or owned by a private entity providing transit service under contract with a transit district or transportation authority, and used to transport persons for compensation shall meet the emission standards adopted by the State Air Resources Board pursuant to Section 43806 of the Health and Safety Code.

(b) As used in this section, “heavy-duty” has the same meaning as defined in Section 39033 30280 of the ~~Health and Safety~~ Environment Code.

(c) This section applies to all new heavy-duty motor vehicles purchased on or after January 1, 1996, and all new or replacement engines purchased on or after January 1, 1996, for use in heavy-duty vehicles.

Comment. Section 28114 is amended to substitute reference to the Environment Code provision that replaced former Health and Safety Code Section 39033.

Section 11 of Chapter 1252 of the Statutes of 1992 (repealed)

SEC. _____. Section 11 of Chapter 1252 of the Statutes of 1992 is repealed.

~~Sec. 11. (a) If a violation is punishable under Division 26 (commencing with Section 39000) of the Health and Safety Code as a violation of either (1) a permit condition or (2) an order, rule, or regulation, of the State Air Resources Board or of an air pollution control district or air quality management district, the violation may be punished as a violation of either (1) or (2), but not both.~~

~~(b) This language is modeled on Penal Code Section 654, for purposes of civil and criminal air pollution violations.~~

DISPOSITION OF EXISTING LAW

Note. This table shows the disposition of sections in the Health and Safety Code and in the Session Laws, in effect on January 27, 1998, that are to be repealed in connection with the Environment Code legislation. For further detail, see the Comment to the appropriate section in the attached staff draft.

HEALTH AND SAFETY CODE

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
39000	30000	39037.1	30305
39001	30001	39037.5	30310
39002	30002	39038	30315
39003	30003	39038.3	30320
39010	30100	39038.5	30325
39010.5	30105	39039	30330
39010.6	30110	39040	30335
39011	30115	39041	30340
39012	30120	39042	30345
39013 (1st pt.)	30125	39042.5	30350
39013 (2d pt.)	30130	39043	30355
39014	30135	39043.5	30360
39015	30140	39044	30365
39016	30145	39045	30370
39016.5	30150	39046	30375
39017	30155	39047	30380
39018	30160	39047.5	30385
39019	30165	39048	30390
39019.5	30170	39049	30395
39019.6	30175	39050	30400
39020	30180	39050.5	30405
39021	30185	39050.7	30410
39021.5	30190	39050.8	30415
39022	30195	39051	30420
39023	30200	39051.5	30425
39024	30205	39051.7	30430
39024.5	30210	39052	30435
39024.6	30215	39052.5	30440
39025	30220	39052.6	30445
39026	30225	39053	30450
39026.5	30230	39053.3	30455
39027	30240	39053.5	30460
39027.5	30245	39053.6 (1st pt.)	30465
39028	30250	39053.6 (2d pt.)	30235
39029	30255	39054	30470
39030	30260	39055	30475
39031	30265	39055.5	30480
39032	30270	39056	30485
39032.5	30275	39057	30490
39033	30280	39058	30495
39034	30285	39059	30500
39035	30290	39060	30505
39037	30295	39150(a) & (b)	30600
39037.05	30300	39150(c)	30650

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
39150(d)	30651	39616(g)	31456(a)
39150(e)	30652(a)	39616(h)	31456(b)
39150(f)	30652(b)	39617	31500
39151	30700	39618	31501
39152(a)	30701(a)	39619	31550
39152(b)	30703	39619.5	31551
39152(c)	30701(b)	39620	31206
39152(d)	30701(c)	39650	31600
39152(e)	30702	39655(a)	31675
39152(f)	30705	39655(b)	31655
39152(g)	30750	39655(c)	31670
39152(h)	30704(a)	39655(d)	31660
39152(i)	30704(b)	39655(e)	31665
39152(j)	30752	39655 (intro.)	31650
39152(k)	30751	39656	31700
39153(a)	30601	39657	31701
39153(b)	30602	39658	31702
39500	31000	39659	31703
39510 (a) - (d)	31100	39660(a)	31750(a)
39510 (e)	31101	39660(b)	31751(a)
39510 (f)	omitted	39660(c)	31751(b) & (c)
39511	31102	39660(d)	31750(b)
39512	31103	39660(e)	31752
39512.5	31104	39660(f)	31753
39513	31105	39660.5	31754
39514	31106	39661	31755
39515	31107	39662	31756
39516	31108	39663	31757
39517	31109	39664	31758
39600	31200	39665	31800
39601	31202	39666(a)	31801
39602	31203	39666(b)	31802(a)
39603	31204	39666(c)	31802(b)
39604	31205	39666(d)	31803
39605	31201	39666(e)	31804
39606	31250	39666(f)	31805
39606.1	31251	39667	31806
39607	31300	39668(a)	31807
39607.3	31301	39668(b)	31808
39607.5(a)	31350(a)	39668(c)	31809
39607.5(b)	31351	39668(d)	31810
39607.5(c)	31350(b)	39669	31811
39608	31252	39670(a)	31850
39609	31302	39670(b)	31852
39610	31303	39670(c)	31853
39612(a)	31400(a)	39670(d)	31854
39612(b)	31401	39670(e)	31855
39612(c)	31400(b)	39670(f)	31856
39612(d)	31402	39670(g)	31857
39612(e)	31403	39671	31858
39612(f)	31404	39674	31900
39612(g)	31405	39675(a)	31901
39616(a)	31450	39675(b)	omitted
39616(b)	31451	39700	32000
39616(c)	31452	39701	32001
39616(d)	31453	39702	32002
39616(e)	31454	39703	32003
39616(f)	31455	39704	32004

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
39705	32005	39805	32156
39706	32006	39806	32200
39750	32007	39806.5	32202
39751	32008	39807	32158
39752	32009	39808	32201
39753	32010	39809	32102
39800	32101	39810	32157
39801	32100	39811	32103
39802(a)	32150	39900	32300
39802(b)	32151	39901	32301
39802(c)	32155	39902	32302
39802.5	32152	39903	32303
39803	32153	39904	32304
39804	32154	39905	32305

SESSION LAWS

Session Laws	Env't Code
1992 Cal. St. ch. 1252, §11	30004