

Memorandum 98-45

Environment Code: Division 4 — Air Resources: Parts 5-9

<p>Note: The proposed Environment Code is intended to reorganize and continue existing environmental statutory law without substantive change.</p>

Attached to this memorandum is a staff draft of Parts 5 to 9 of Division 4 of the proposed Environment Code, relating to air resources. 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.

ORGANIZATIONAL IMPROVEMENTS

In drafting these parts, the staff has made a number of nonsubstantive changes to improve the organization of the material. These improvements are generally of two types:

(1) *Division of unnecessarily long sections.* Many sections are extremely long and contain a number of related, but distinct provisions. These sections can be difficult to understand, and their great length complicates any subsequent amendment. This latter problem is addressed in Senate and Assembly Joint Rule 8, which provides in relevant part:

Bills that are not amendatory of existing laws shall be divided into short sections, where this can be done without destroying the sense of any particular section, to the end that future amendments may be made without the necessity of setting forth and repeating sections of unnecessary length.

In preparing the attached draft, unnecessarily long sections have been divided into a number of shorter sections. In many cases, the resulting sections have been organized into one or more articles. For example, Health and Safety Code Section 44011.6, governing the testing and regulation of emissions from heavy-duty diesel vehicles, contains 14 subdivisions. In the attached draft, this section has been divided into 12 separate sections organized as an article. See proposed Sections 43000-43011.

(2) *Structural division of undifferentiated material.* In many cases, organization can be improved by breaking up relatively large organizational divisions into smaller ones. This makes the material more accessible and comprehensible by aggregating related provisions under specific descriptive headings. For example, Article 2 (commencing with Section 44010) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code (setting out program requirements for the Motor Vehicle Inspection Program) consists of 28 sections, many of them overly long. In the attached draft, this article has been promoted to a chapter and broken up into eight subordinate articles, consisting of 74 separate sections. See proposed Sections 42700-43058.

INOPERATIVE SECTIONS

The operation of a number of sections within Part 5 is contingent on the filing of certain reports by the Department of Consumer Affairs, the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District. See 1994 Cal. Stat. ch. 1192, § 32. Inquiries made with the Secretary of State's Office, the Department of Consumer Affairs, and the California Air Resources Board revealed that these reports have never been filed. These inoperative sections are not continued in the attached draft. See the Staff Notes following proposed Sections 41700, 41752, 41818, 41904, 42101, 42752, 44103, and 44417.

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 40602, 41105, 41502, 41700, 41701, 41902, 42102, 43252, 43351, 43355, 43501, 43601, 45152, 45250, 46600, and 47103, and 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 these sections raise this issue and request input on the continued relevance of the deadline provisions. See proposed Sections 40101, 40103, 40605, 40755, 40805, 40850, 41850, 41861, 41901, 41903, 42201, 43500, 43706, 45300, 45400, 45401, 45500, 45703, 46506, and 47050.

Miscellaneous Obsolete Provisions

A number of sections appear to be obsolete for reasons other than those discussed above (e.g., apparently satisfied sunset contingencies, obsolete transitional provisions, completion of statutory charge, etc.). See the Staff Notes following proposed Sections 40203, 40206, 40400, 40758, 40801, 40850, 40904, 41653, 41903, 42102, 43406, 43450, 44102, 44104, 45102, 45107, 45701, 46500, 46503, 46504, 46505, and 47250.

DRAFTING DEFECTS

A number of sections contain defects such as reference errors, ambiguities, and apparent redundancy. The staff would like to receive input on how to resolve these defects. See the Staff Notes following proposed Sections 41001, 41400, 41850, 42102, 42953, 43450, 43913, 44102, 44415, 44417, 45103, 45307, 45552, 46002, 47150, and 47205.

MINOR TECHNICAL ISSUES

A few sections contain references to sections of the U.S. Code that have been renumbered. These references have been updated in the attached draft. See Staff Notes to Proposed Sections 40904, 41301, and 41757, and to the conforming revisions of Vehicle Code Sections 27156.1 and 38390.

Some sections make what the staff believes to be nonsubstantive modifications to the scope of cross-references. The staff would like to receive input on whether these changes are in fact nonsubstantive. See Staff Notes to proposed Sections 40501, 47250, 47252, and 47253.

Respectfully submitted,

Brian Hebert
Staff Counsel

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PART 5. VEHICULAR AIR POLLUTION CONTROL

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. LEGISLATIVE FINDINGS AND DECLARATIONS

§ 40000. Legislative findings and declaration

40000. The Legislature finds and declares as follows:

(a) The emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the state.

(b) The control and elimination of those air pollutants is of prime importance for the protection and preservation of the public health and well-being, and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property.

(c) The state has a responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants.

(d) Vehicle emission standards applied to new motor vehicles, and to used motor vehicles equipped with motor vehicle pollution control devices, are standards with which all motor vehicles shall comply.

(e) Dependence on petroleum based fuels in motor vehicles not only contributes to substantial degradation of air quality and risk to public health, but also impedes the state's progress toward the petroleum use reduction goal prescribed in Section 25000.5 of the Public Resources Code.

Comment. Section 40000 continues former Health and Safety Code Section 43000 without change.

§ 40001. Additional legislative findings and declarations

40001. The Legislature further finds and declares as follows:

(a) Despite the significant reductions in vehicle emissions which have been achieved in recent years, continued growth in population and vehicle miles traveled throughout California have the potential not only to prevent attainment of the state standards, but in some cases, to result in worsening of air quality.

(b) The attainment and maintenance of the state air quality standards will necessitate the achievement of substantial reductions in new vehicle emissions and substantial improvements in the durability of vehicle emissions systems.

(c) The burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, including both on- and off-road vehicles, light-duty cars and trucks, and heavy-duty vehicles, to accomplish improvements in both the emissions level and in-use performance and durability of all new motor vehicles.

(d) The state board should take immediate action to implement both short- and long-range programs of across-the-board reductions in vehicle emissions and smoke, including smoke from heavy-duty diesel vehicles, which can be relied upon by the districts in the preparation of their attainment plans or plan revisions pursuant to Sections 33201 and 33453.

(e) In order to attain the state and federal standards as expeditiously and equitably as possible, it is necessary for the authority of the state board to be clarified and expanded with respect to the control of motor vehicles and motor vehicle fuels.

Comment. Section 40001 continues former Health and Safety Code Section 43000.5 without substantive change. The reference in subdivision (d) to Health and Safety Code Section 40902 is erroneous and has not been continued. Section 40902 does not exist.

CHAPTER 2. RESPONSIBILITY OF STATE BOARD

§ 40100. Attainment of state standards at earliest practicable date


40100. The state board shall endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date.

Comment. Section 40100 continues former Health and Safety Code Section 43018(a) without substantive change.

§ 40101. Emission reduction goals

40101. Not later than January 1, 1992, the state board shall take whatever actions are necessary, cost-effective, and technologically feasible in order to achieve, not later than December 31, 2000, a reduction in the actual emissions of reactive organic gases of at least 55 percent, a reduction in emissions of oxides of nitrogen of at least 15 percent from motor vehicles. These reductions in emissions shall be calculated with respect to the 1987 baseline year. The state board also shall take action to achieve the maximum feasible reductions in particulates, carbon monoxide, and toxic air contaminants from vehicular sources.

Comment. Section 40101 continues former Health and Safety Code Section 43018(b) without substantive change.

 **Staff Note.** This section specifies a deadline for certain actions. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Were the actions taken? (2) Does the section still serve a useful purpose?

§ 40102. Adoption of standards and regulations

40102. (a) In carrying out this chapter the state board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including, but not limited to, all of the following:

- (1) Reductions in motor vehicle exhaust and evaporative emissions.
 - (2) Reductions in emissions from in-use emissions from motor vehicles through improvements in emission system durability and performance.
 - (3) Requiring the purchase of low-emission vehicles by state fleet operators.
 - (4) Specification of vehicular fuel composition.
- (b) Prior to adopting standards and regulations pursuant to chapter, inclusive, the state board shall consider the effect of the standards and regulations on the economy of the state, including, but not limited to, motor vehicle fuel efficiency.

Comment. Section 40102 continues former Health and Safety Code Section 43018(c) & (e) without substantive change. Subdivision (f) of former Health and Safety Code Section 43018 provided that amendments made to that section in the 1989-90 Regular Session of the Legislature were declaratory of then-existing law. This transitional provision has not been continued.

1 **§ 40103. Hearings and workshops**

2 40103. In order to accomplish the purposes of this division, and to ensure timely
3 approval of the district's plans for attainment of the state air quality standards by the state
4 board, the state board shall adopt the following schedule for workshops and hearings to
5 consider the adoption of the standards and regulations required pursuant to this chapter:

6 (a) Workshops on the adoption of vehicular fuel specifications for aromatic content,
7 diesel fuel quality, light-duty vehicle exhaust emission standards, and revisions to the
8 standards for new vehicle certification and durability to reflect current driving conditions
9 and useful vehicle life shall be held not later than March 31, 1989. Hearings of the state
10 board to consider adoption of proposed regulations pursuant to this section shall be held
11 not later than November 15, 1989.

12 (b) Notwithstanding Sections 40800 and 40801, workshops on the adoption of
13 regulations governing gasoline Reid vapor pressure, and standards for heavy-duty and
14 medium-duty vehicle emissions, shall be held not later than January 31, 1990. Hearings of
15 the state board to consider adoption of proposed regulations pursuant to this section shall
16 be held not later than November 15, 1990.

17 (c) Workshops on the adoption of regulations governing detergent content, emissions
18 from off-highway vehicles, vehicle fuel composition, emissions from construction
19 equipment and farm equipment, motorcycles, locomotives, utility engines, and to the extent
20 permitted by federal law, marine vessels, shall be held not later than January 31, 1991.
21 Hearings of the state board to consider adoption of proposed regulations pursuant to this
22 section shall be held not later than November 15, 1991.

23 **Comment.** Section 40103 continues former Health and Safety Code Section 43018(d)
24 without substantive change.

25 ☞ **Staff Note.** Each of the subdivisions in this section specifies a deadline for conducting a
26 workshop. These provisions may be obsolete. The staff would like to receive input on two
27 questions: (1) Were the workshops held? (2) Do the provisions still serve a useful purpose?

28 CHAPTER 3. ADOPTION OF STANDARDS, REGULATIONS
29 AND SPECIFICATIONS

30 **§ 40200. Legislative intent**

31 40200. It is the intent of the Legislature that the state board act as expeditiously as is
32 feasible to reduce nitrogen oxide emissions from diesel vehicles, marine vessels, and other
33 categories of vehicular and mobile sources which significantly contribute to air pollution
34 problems.

35 **Comment.** Section 40200 continues former Health and Safety Code Section 43013(h)
36 without substantive change.

37 **§ 40201. Adoption of standards, regulations and specifications**

38 40201. (a) The state board may adopt and implement motor vehicle emission standards,
39 in-use performance standards, and motor vehicle fuel specifications for the control of air
40 contaminants and sources of air pollution which the state board has found to be necessary,
41 cost-effective, and technologically feasible, to carry out the purposes of this division,
42 unless preempted by federal law.

43 (b) The state board shall, consistent with subdivision (a), adopt standards and regulations
44 for light-duty and heavy-duty motor vehicles; medium-duty motor vehicles, as determined

and specified by the state board; and off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles, construction equipment, farm equipment, utility engines, locomotives, and, to the extent permitted by federal law, marine vessels.

Comment. Section 40201 continues former Health and Safety Code Section 43013(a)-(b) without change.

§ 40202. Farm equipment

40202. Prior to adopting standards and regulations for farm equipment, the state board shall hold a public hearing and find and determine that the standards and regulations are necessary, cost-effective, and technologically feasible. The state board shall also consider the technological effects of emission control standards on the cost, fuel consumption, and performance characteristics of mobile farm equipment.

Comment. Section 40202 continues former Health and Safety Code Section 43013(c) without substantive change.

§ 40203. Locomotives

40203. Notwithstanding subdivision (b) of Section 40201, the state board shall not adopt any standard or regulation affecting locomotives until the final study required under Section 5 of Chapter 1326 of the Statutes of 1987 has been completed and submitted to the Governor and Legislature.

Comment. Section 40203 continues former Health and Safety Code Section 43013(d) without substantive change.

☞ **Staff Note.** This section appears to be obsolete. The section's prohibition lasts only until the specified study has been completed and submitted. Section 5(c) of Chapter 1326 of the Statutes of 1987 requires that the study be completed and submitted no later than January 1, 1990. The staff would like to receive input on two questions: (1) Was the study completed and submitted as required? (2) Does this section still serve a useful purpose?

§ 40204. Standards or regulations relating to motor vehicle fuel specifications

40204. Prior to adopting or amending any standard or regulation relating to motor vehicle fuel specifications pursuant to Sections 40200 to 40205, inclusive, the state board shall, after consultation with public or private entities that would be significantly impacted as described in paragraph (2) of subdivision (a) of Section 40205, do both of the following:

(a) Determine the cost-effectiveness of the adoption or amendment of the standard or regulation. The cost-effectiveness shall be compared on an incremental basis with other mobile source control methods and options.

(b) Based on a preponderance of scientific and engineering data in the record, determine the technological feasibility of the adoption or amendment of the standard or regulation. That determination shall include, but is not limited to, the availability, effectiveness, reliability, and safety expected of the proposed technology in an application that is representative of the proposed use.

Comment. Section 40204 continues former Health and Safety Code Section 43013(e) without substantive change.

§ 40205. Motor vehicle fuel specifications

40205. (a) Prior to adopting or amending any motor vehicle fuel specification pursuant to Sections 40200 to 40205, inclusive, the state board shall do both of the following:

(1) To the extent feasible, quantitatively document the significant impacts of the proposed standard or specification on affected segments of the state's economy. The economic analysis shall include, but is not limited to, the significant impacts of any change on motor vehicle fuel efficiency, the existing motor vehicle fuel distribution system, the competitive position of the affected segment relative to border states, and the cost to consumers.

(2) Consult with public or private entities that would be significantly impacted to identify those investigative or preventive actions that may be necessary to ensure consumer acceptance, product availability, acceptable performance, and equipment reliability. The significantly impacted parties shall include, but are not limited to, fuel manufacturers, fuel distributors, independent marketers, vehicle manufacturers, and fuel users.

(b) To the extent that there is any conflict between the information required to be prepared by the state board pursuant to subdivision (a) and information required to be prepared by the state board pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the requirements established under subdivision (a) shall prevail.

Comment. Section 40205 continues former Health and Safety Code Section 43013(f)-(g) without substantive change.


§ 40206. Direct import vehicles

40206. (a) In addition to the standards and test procedures adopted by the state board pursuant to Sections 41505 and 42001, the state board may adopt, by regulation, alternate test procedures for certifying direct import vehicles identical to the test procedures applicable to those vehicles pursuant to the National Emission Standards Act (42 U.S.C. Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550) and the regulations adopted thereunder, if the emission standards applicable to those motor vehicles are the standards adopted by the state board for new or used direct import vehicles pursuant to Section 41505 or 42001, respectively.

(b) Those alternate test procedures shall be adopted only if the state board determines that those procedures would be at least as effective for controlling motor vehicle emissions as the procedures adopted pursuant to Section 41505 or 42001, as applicable.

Comment. Section 40206 continues former Health and Safety Code Section 43008.5 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

The former reference to Sections 1857f-1 to 1857f-7 of Title 42 of the U.S. Codes is obsolete and has been replaced with a reference to Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550 of Title 42 of the U.S. Codes.

 **Staff Note.** Health and Safety Code Section 43010 requires the State Board to adopt standards necessary for the implementation of an emissions system inspection program designed and adopted by the Department of Consumer Affairs. Authority for that program has been repealed. See 1988 Cal. Stat. ch. 1544, § 5. Consequently, the requirements of this section are obsolete. The section has not been continued.

CHAPTER 4. ENFORCEMENT

§ 40300. Civil penalty for violations

40300. Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil

1 penalty of not to exceed five hundred dollars (\$500) per vehicle. Any penalty collected
2 pursuant to this section shall be payable to the State Treasurer for deposit in the Air
3 Pollution Control Fund.

4 **Comment.** Section 40300 continues former Health and Safety Code Section 43016 without
5 change.

6 **§ 40301. Injunctions for violations**

7 40301. The state board may enjoin any violation of any provision of this part, or of any
8 order, rule, or regulation of the state board, in a civil action brought in the name of the
9 people of the State of California, except that the state board shall not be required to allege
10 facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or
11 tending to show, irreparable damage or loss.

12 **Comment.** Section 40301 continues former Health and Safety Code Section 43017 without
13 change.

14 **CHAPTER 5. EXEMPTIONS**

15 **§ 40400. Racing vehicles and motorcycles**

16 40400. The provisions of this part shall not apply to:

17 (a) Racing vehicles.

18 (b) Motorcycles, except as otherwise provided in Section 41502.

19 **Comment.** Section 40400 continues the first part of former Health and Safety Code Section
20 43001 without substantive change. The last paragraph, providing that the section became
21 operative on January 1, 1989, is obsolete and has not been continued.

22 **§ 40401. Vehicles of historic value**

23 40401. No motor vehicle of historic interest shall be required to have any motor vehicle
24 pollution control device, except for those devices that were required by this part for the
25 vehicles prior to the time that special identification plates were issued for that vehicle
26 pursuant to Section 5004 of the Vehicle Code.

27 **Comment.** Section 40401 continues former Health and Safety Code Section 43002 without
28 substantive change.

29 **§ 40402. Imported vehicles for use for disabled persons**

30 40402. The state board shall waive the provisions of this division on a case-by-case basis
31 for the purpose of allowing the importation of vehicles designed only for use for disabled
32 persons.

33 **Comment.** Section 40402 continues former Health and Safety Code Section 43002.2
34 without change.

35 **§ 40403. Vehicles modified or altered to use other fuels**

36 40403. (a) Except as otherwise provided in Section 40400 or 40401, or subdivision (b)
37 of Section 40403, the standards applicable under this part for exhaust emissions for
38 gasoline-powered motor vehicles shall apply to motor vehicles which have been modified
39 or altered to use a fuel other than gasoline or diesel.

(b) Subdivision (a) of this section and Sections 4000.1 and 27156 of the Vehicle Code, shall not apply to a motor vehicle altered or modified to use a fuel other than gasoline or diesel completed prior to August 31, 1969.

Comment. Subdivision (a) of Section 40403 continues former Health and Safety Code Section 43004 without substantive change. Subdivision (b) of Section 40403 continues former Health and Safety Code Section 43005 without substantive change.

TITLE 2. FINANCIAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

§ 40500. Air pollution control fund


40500. The Air Pollution Control Fund is continued in existence in the State Treasury. Upon appropriation by the Legislature, the money in the fund shall be available to the state board to carry out its duties and functions.

Comment. Section 40500 continues former Health and Safety Code Section 43015 without change.

§ 40501. Fees for certification

40501. The state board may adopt, by regulation, a schedule of annual fees for the certification of motor vehicles and engines sold in the state to cover the costs of state programs authorized or required under this part related to mobile sources. The total amount of funds collected pursuant to this section shall not exceed four million five hundred thousand dollars (\$4,500,000) in the 1989-90 fiscal year, and in any subsequent year shall not increase by an amount greater than the annual increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. The fees collected by the state board pursuant to this section shall be deposited in the Air Pollution Control Fund.

Comment. Section 40501 continues former Health and Safety Code Section 43019 without substantive change.

 **Staff Note.** Health and Safety Code Section 43019 provides for adoption of a schedule of fees to cover the costs of programs authorized or required under the chapter of which it is a part. (Chapter 1 (commencing with Section 43000) of Part 5 of Division 26 of the Health and Safety Code). This draft reorganizes that chapter and components its distributed throughout the part. Therefore, the staff has replaced the reference to the chapter with a reference to the part. This may inadvertently broaden the purposes for which fees may be adopted. The staff would like to receive input on this question.

§ 40502. Expenditure of funds by state board

40502. (a) Prior to expending any funds for any research, development, or demonstration program or project relating to vehicles or vehicle fuels, the state board shall do both of the following, using existing resources:

(1) Adopt a plan describing any proposed expenditure that sets forth the expected costs and qualitative as well as quantitative benefits of the proposed program or project.

(2) Find that the proposed program or project will not duplicate any other past or present publicly funded California program or project. This paragraph is not intended to prevent funding for programs or projects jointly funded with another public agency where there is no duplication.

(b) Within 120 days from the date of the conclusion of a program or project subject to subdivision (a) that is funded by the state board, the state board shall issue a public report that sets forth the actual costs of the program or project, the results achieved and how they compare with expected costs and benefits determined pursuant to paragraph (1) of subdivision (a), and any problems that were encountered by the program or project.

Comment. Section 40502 continues former Health and Safety Code Section 43022 without change. Uncodified statutory provisions applicable to former Health and Safety Code Section 43022 now apply to this section. See 1995 Cal. Stat. ch. 609, § 1 (legislative findings and declarations).

CHAPTER 2. DISTRICT FEES TO IMPLEMENT THE CALIFORNIA CLEAN AIR ACT

Article 1. General Provisions

§ 40600. Legislative findings and declarations

40600. The Legislature hereby finds and declares as follows:

(a) This chapter is intended to ensure that any county air pollution control district, or unified or regional air pollution control district, may, upon adoption of a resolution by the district governing board, exercise fee authority similar to that provided the south coast district pursuant to Section 9250.11 of the Vehicle Code and the Sacramento district pursuant to Section 35602, in order to ensure that districts, and, in the south coast district, other implementing agencies, have the necessary funds to carry out their responsibilities for implementing the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988).

(b) The revenues from the fees collected pursuant to this chapter shall be used solely to reduce air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988.

Comment. Section 40600 continues former Health and Safety Code Section 44220 without substantive change.

§ 40601. Levy of fee on motor vehicles registered within district

40601. (a) In addition to any other fees specified in this code, the Vehicle Code, and the Revenue and Taxation Code, a district, except the Sacramento district, which has been designated by the state board as a state nonattainment area for any pollutant emitted by motor vehicles may levy a fee of up to two dollars (\$2) on motor vehicles registered within the district. A district may impose the fee only if the district board adopts a resolution providing for both the fee and a corresponding program for the reduction of air pollution from motor vehicles pursuant to, and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of, the California Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988).

(b) In districts with nonelected officials on their boards, a resolution adopted pursuant to subdivision (a) shall be approved by both a majority of the board and a majority of the board members who are elected officials.

(c) A fee imposed pursuant to this section shall become effective on either April 1 or October 1, as provided in the resolution adopted by the board pursuant to subdivision (a).

Comment. Section 40601 continues former Health and Safety Code Section 44223 without change.

1 **§ 40602. Increase in fee**

2 40602. A district may increase the fee established under Section 40601 to up to four
3 dollars (\$4). A district may increase the fee only if the following conditions are met:

4 (a) A resolution providing for both the fee increase and a corresponding program for
5 expenditure of the increased fees for the reduction of air pollution from motor vehicles
6 pursuant to, and for related planning, monitoring, enforcement, and technical studies
7 necessary for the implementation of, the California Clean Air Act of 1988 is adopted and
8 approved by the governing board of the district.

9 (b) In districts with nonelected officials on their governing boards, the resolution shall be
10 adopted and approved by both a majority of the governing board and a majority of the
11 board members who are elected officials.

12 (c) An increase in fees established pursuant to this section shall become effective on
13 either April 1 or October 1, as provided in the resolution adopted by the board pursuant to
14 subdivision (a).

15 **Comment.** Section 40602 continues former Health and Safety Code Section 44225 without
16 substantive change. The reference in subdivision (a) to the date after which a district may
17 raise the specified fee (April 1, 1992) is obsolete and has not been continued.

18 **§ 40603. Collection of fees on renewal of registration**

19 40603. Upon request of a district, the Department of Motor Vehicles shall collect the fees
20 established pursuant to Sections 40601 and 40602 upon renewal of the registration of any
21 motor vehicle subject to this part and registered in the district, except those vehicles which
22 are expressly exempted under the Vehicle Code from the payment of registration fees.

23 **Comment.** Section 40603 continues former Health and Safety Code Section 44227 without
24 substantive change.

25 **§ 40604. Exemption from fee of low-emission motor vehicle**

26 40604. After consulting with the Department of Motor Vehicles on the feasibility thereof,
27 a district board may exempt from all or part of the fee any category of low-emission motor
28 vehicle.

29 **Comment.** Section 40604 continues former Health and Safety Code Section 44231 without
30 change.

31 **§ 40605. Report by state board**

32 40605. The state board shall report to the Legislature on or before December 31, 1992,
33 on the air pollution reduction programs funded pursuant to this chapter. The report shall
34 include, but not be limited to, an analysis of the use of vehicle registration fees for air
35 pollution programs, the efficacy and results of the programs funded by the fees and any
36 conclusions and recommendations by the state board.

37 **Comment.** Section 40605 continues former Health and Safety Code Section 44245 without
38 change.

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

1 **§ 40606. Report by local agencies**

2 40606. Local agencies imposing vehicle registration fees for air pollution programs
3 pursuant to this chapter shall report to the state board on their use of the fees and the results
4 of the programs funded by the fees and shall cooperate with the state board in the
5 preparation of its report. These reports shall be submitted according to a schedule adopted
6 by the state board to ensure compliance with the reporting requirements of Section 40605.

7 **Comment.** Section 40606 continues former Health and Safety Code Section 44247 without
8 substantive change.

9 Article 2. Use of Fees

10 **§ 40650. Distribution and use of fees**

11 40650. (a) After deducting all administrative costs it incurs through collection of fees
12 pursuant to Section 40603, the Department of Motor Vehicles shall distribute the revenues
13 to districts which shall use the fees to reduce air pollution from motor vehicles and to carry
14 out related planning, monitoring, enforcement, and technical studies necessary for
15 implementation of the California Clean Air Act of 1988. Fees collected by the Department
16 of Motor Vehicles pursuant to this chapter shall be distributed to districts based upon the
17 amount of fees collected from motor vehicles registered within each district.

18 (b) The Department of Motor Vehicles may annually expend not more than the following
19 percentages of the fees collected pursuant to Section 40603 on administrative costs:

20 (1) During the first year after the operative date of this chapter, not more than 5 percent of
21 the fees collected may be used for administrative costs.

22 (2) During the second year after the operative date of this chapter, not more than 3
23 percent of the fees collected may be used for administrative costs.

24 (3) During any year subsequent to the second year after the operative date of this chapter,
25 not more than 1 percent of the fees collected may be used for administrative costs.

26 **Comment.** Section 40650 continues former Health and Safety Code Section 44229 without
27 substantive change.

28 **§ 40651. Use of fees for administrative costs**

29 40651. Not more than 5 percent of the fees distributed to any district pursuant to Section
30 40650, or distributed by a district to any other public agency pursuant to this chapter, shall
31 be used by the district or other public agency for administrative costs.

32 **Comment.** Section 40651 continues former Health and Safety Code Section 44233 without
33 substantive change.

34 **§ 40652. Use of fees for transit services**

35 40652. A district shall not use fees established under Sections 40601 and 40602 for the
36 purpose of establishing or maintaining the district as a direct provider of carpool, vanpool,
37 or other ridesharing or transit services. However, a district may use these funds to enter
38 into, and implement, agreements with agencies which directly provide carpool, vanpool, or
39 other ridesharing or transit services to provide these services.

40 **Comment.** Section 40652 continues former Health and Safety Code Section 44235 without
41 substantive change.

1 **§ 40653. Use of fees for congestion management program**

2 40653. A district may allocate funds raised by fees established under Sections 40601 and
3 40602 to meet the requirements of Section 65089 of the Government Code, if those
4 requirements are in compliance with, and necessary for the implementation of, the
5 California Clean Air Act of 1988.

6 **Comment.** Section 40653 continues former Health and Safety Code Section 44236 without
7 substantive change.

8 **§ 40654. Use of fees for transportation control measures**

9 40654. A district may use fees established under Sections 40601 and 40602 to enter into
10 an agreement with a council of governments, regional agency, or local agency to carry out
11 Sections 32900 to 32907, inclusive.

12 **Comment.** Section 40654 continues former Health and Safety Code Section 44237 without
13 substantive change.

14 Article 3. Funds Subvened to Bay District

15 **§ 40700. Subvention of fee revenues to bay district**

16 40700. Fee revenues generated under this chapter in the bay district shall be subvened to
17 the bay district by the Department of Motor Vehicles after deducting its administrative costs
18 pursuant to Section 40650.

19 **Comment.** Section 40700 continues former Health and Safety Code Section 44241(a)
20 without substantive change.

21 **§ 40701. Allocation of fee revenues**

22 40701. Fee revenue generated under this chapter shall be allocated by the bay district for
23 projects and programs specified in Section 40702 to cities, counties, the Metropolitan
24 Transportation Commission, transit districts, or any other public agency responsible for
25 implementing one or more of the specified projects or programs. Fee revenues shall not be
26 used for any planning activities that are not directly related to the implementation of a
27 specific project or program.

28 **Comment.** Section 40701 continues former Health and Safety Code Section 44241(c)
29 without substantive change.

30 **§ 40702. Projects and programs eligible to receive funds**

31 40702. Fee revenues generated under this chapter shall be allocated by the bay district to
32 implement the following mobile source and transportation control projects and programs
33 that are included in the plan adopted pursuant to Sections 32900 to 32907, inclusive,
34 33304, and 35000 to 35003, inclusive:

- 35 (a) The implementation of ridesharing programs.
36 (b) The purchase or lease of clean fuel buses for school districts and transit operators.
37 (d) The provision of local feeder bus or shuttle service to rail and ferry stations and to
38 airports.
39 (d) Implementation and maintenance of local arterial traffic management, including, but
40 not limited to, signal timing, transit signal preemption, bus stop relocation and “smart
41 streets.”
42 (e) Implementation of rail-bus integration and regional transit information systems.

(f) Implementation of demonstration projects in congestion pricing of highways, bridges, and public transit, and low-emission vehicles.

(g) Implementation of a smoking vehicles program.

(h) Implementation of an automobile buy-back scrappage program operated by a governmental agency.

(i)(1) Implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program.

(2) This subdivision shall become inoperative on January 1, 2000, unless a later enacted statute deletes or extends that date.

Comment. Section 40702 continues former Health and Safety Code Section 44241(b) without substantive change.

§ 40703. Allocation of fee revenues to entities designated by counties

40703. (a) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (b) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(b) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (a) in accordance with the terms and conditions of the resolution.

(c) Any county, or entity designated pursuant to subdivision (b), that receives funds pursuant to Sections 40700 to 40703, inclusive, shall, at least once a year, hold one or more public meetings for the purpose of adopting criteria for expenditure of the funds and to review the expenditure of revenues received pursuant to Sections 40700 to 40703, inclusive, by any designated entity.

Comment. Section 40703 continues former Health and Safety Code Section 44241(d)-(f) without substantive change.

§ 40704. Public hearing by state board

40704. The bay district board shall hold an annual public hearing to review the expenditure of revenues received by the bay district pursuant to Sections 40700 to 40703, inclusive, to determine their effectiveness in improving air quality.

Comment. Section 40704 continues former Health and Safety Code Section 44241.5 without substantive change.

§ 40705. Audit of funded programs and projects

40705. (a) Any agency which receives funds pursuant to Sections 40700 to 40703, inclusive, shall, at least once every two years, undertake an audit of each program or project funded. The audit shall be conducted by an independent auditor selected by the bay district in accordance with Division 2 (commencing with Section 1100) of the Public Contract Code. The district shall deduct any audit costs which will be incurred pursuant to this section prior to distributing fee revenues to cities, counties, or other agencies pursuant to Sections 40700 to 40703, inclusive.

(b) Upon completion of an audit conducted pursuant to subdivision (a), the bay district shall do both of the following:

(1) Make the audit available to the public and to the affected agency upon request.

(2) Review the audit to determine if the fee revenues received by the agency were spent for the reduction of air pollution from motor vehicles pursuant to the plan prepared pursuant to Sections 35000 to 35003, inclusive, and 32900 to 32907, inclusive.

(c) If, after reviewing the audit, the bay district determines that the revenues from the fees may have been expended in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to that plan, the district shall do all of the following:

(1) Notify the agency of its determination.

(2) Within 45 days of the notification pursuant to paragraph (1), hold a public hearing at which the agency may present information relating to expenditure of the revenues from the fees.

(3) After the public hearing, if the district determines that the agency has expended the revenues from the fees in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to the plan prepared pursuant to Sections 35000 to 35003, inclusive, and 32900 to 32907, inclusive, the district shall withhold these revenues from the agency in an amount equal to the amount which was inappropriately expended. Any revenues withheld pursuant to this paragraph shall be redistributed to the other cities within the county, or to the county, to the extent the district determines that they have complied with the requirements of this chapter.

Comment. Section 40705 continues former Health and Safety Code Section 44242(a)-(c) without substantive change.

§ 40706. Time limitation on use of allocated funds

40706. Any agency which receives funds pursuant to Sections 40700 to 40703, inclusive shall encumber and expend the funds within two years of receiving the funds, unless an application for funds pursuant to this chapter states that the project will take a longer period of time to implement and is approved by the district or the agency designated pursuant to subdivision (b) of Section 40703. In any other case, the district or agency may extend the time beyond two years, if the recipient of the funds applies for that extension and the district or agency, as the case may be, finds that significant progress has been made on the project for which the funds were granted.

Comment. Section 40706 continues former Health and Safety Code Section 44242(d) without substantive change.

Article 4. Funds Subvened to South Coast District

§ 40750. Subvention of fee revenues to south coast district

40750. Fee revenues generated under this chapter in the south coast district shall be subvened to the south coast district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 40650.

Comment. Section 40750 continues the substance of the introductory clause of former Health and Safety Code Section 44243.

§ 40751. District air pollution reduction and technical assistance programs

40751. (a) Thirty cents (\$0.30) of every dollar subvened under Section 40750 shall be used by the south coast district for programs to reduce air pollution from motor vehicles and to carry out related planning, monitoring, enforcement, and technical studies which are

1 authorized by, or necessary to implement, the Clean Air Act Amendments of 1990 (P.L.
2 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant to Article 7
3 (commencing with Section 36100) of Chapter 5 of Part 3.

4 (b) Funds allocated pursuant to subdivision (a) shall also be used to provide technical
5 assistance to cities receiving funds pursuant to Section 40752. That technical assistance
6 shall include, but not be limited to, workshops and direct assistance to individual cities on
7 how to develop and implement programs to reduce air pollution from motor vehicles.

8 **Comment.** Section 40751 continues former Health and Safety Code Section 44243(a)
9 without substantive change.

10 **§ 40752. Allocation of funds to cities and counties**

11 40752. (a) Forty cents (\$0.40) of every dollar subvended under Section 40750 shall be
12 distributed by the district to cities and counties located in the south coast district, based
13 upon their prorated share of population, to be used to implement programs to reduce air
14 pollution from motor vehicles which are authorized by, or necessary to implement, the
15 Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan
16 prepared pursuant to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3.
17 No city or county may receive funds pursuant to this section unless, on or before April 1,
18 1992, or, for a newly incorporated city, within 90 days of the date of incorporation, the
19 city or county has adopted and transmitted to the south coast district an ordinance which
20 does all of the following:

21 (1) Expresses support for the adoption of motor vehicle registration fees to be used to
22 reduce air pollution from motor vehicles pursuant to the Clean Air Act Amendments of
23 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 7
24 (commencing with Section 36100) of Chapter 5 of Part 3.

25 (2) Expressly requires all fee revenues distributed to the city or county pursuant to this
26 section or Section 40753 to be spent to reduce air pollution from motor vehicles pursuant to
27 the Clean Air Act Amendments of 1990, the California Clean Air Act of 1988, or the plan
28 prepared pursuant to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3.

29 (3) Establishes an air quality improvement trust fund into which all fee revenues
30 distributed to the city or county shall be deposited, and out of which expenditures shall be
31 made to reduce air pollution from motor vehicles pursuant to the Clean Air Act
32 Amendments of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant
33 to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3.

34 (b) If a city or county fails to adopt an ordinance pursuant to this section, the fee
35 revenues which would be distributed to that city or county shall instead be distributed to the
36 other cities and counties within the south coast district which have adopted an ordinance
37 pursuant to this section, based upon their prorated share of registered motor vehicles.

38 **Comment.** Section 40752 continues former Health and Safety Code Section 44243(b)
39 without substantive change.

40 **§ 40753. Grants to fund air pollution reduction projects**

41 40753. Thirty cents (\$0.30) of every dollar subvended under Section 40750 shall be
42 deposited by the district in an account to be used, pursuant to Section 40755, to provide
43 grants to fund projects for the exclusive purpose of reducing air pollution from motor
44 vehicles that are authorized by, or necessary to implement, the Clean Air Act Amendments
45 of 1990, the California Clean Air Act of 1988, or the plan prepared pursuant to Article 7
46 (commencing with Section 36100) of Chapter 5 of Part 3.

1 **Comment.** Section 40753 continues former Health and Safety Code Section 44243(c)
2 without substantive change.

3 **§ 40754. Funding for Regional Transportation Agencies Coalition**

4 40754. (a) The south coast district shall provide one million five hundred thousand
5 dollars (\$1,500,000) annually on or before January 15 of each year to the Regional
6 Transportation Agencies Coalition or its successor agency subject to the following
7 conditions:

8 (1) The south coast district may, until January 1, 1999, utilize revenues from the fund
9 established pursuant to subdivision (b) of Section 36452 for the purpose of this section.
10 Notwithstanding paragraph (1) of subdivision (a) of Section 36452, the south coast district
11 shall not be required to annually allocate one million dollars (\$1,000,000) to the Air Quality
12 Assistance Fund to replace revenues allocated pursuant to this section.

13 (2) On and after January 1, 1999, the south coast district may utilize revenues received
14 from civil and criminal penalties, out-of-court settlements, or other sources for the purpose
15 of this section.

16 (3) On and after January 1, 1999, the south coast district may utilize revenues generated
17 pursuant to Section 40750 for the purposes of this section.

18 (b) The Regional Transportation Agencies Coalition shall fully allocate the revenues
19 pursuant to subdivision (a) as expeditiously as possible to regional or county rideshare
20 agencies for the purpose of providing marketing and client services to maximize voluntary
21 ridesharing, including carpools, vanpools, transit, bicycling, telecommuting, and other
22 alternative methods of commuting by employees at worksites in the South Coast Air Basin
23 who commute during the peak period to worksites not regulated by south coast district Rule
24 2202. These funds are intended to supplement and not replace existing rideshare program
25 funding.

26 **Comment.** Section 40754 continues former Health and Safety Code Section 44243.5
27 without substantive change.

28 **§ 40755. Regional mobile source air pollution reduction review committee**

29 40755. (a) There is hereby created a regional Mobile Source Air Pollution Reduction
30 Review Committee. The committee shall be comprised of one representative from each of
31 the following agencies:

32 (1) The south coast district.

33 (2) The Southern California Association of Governments.

34 (3) The San Bernardino Associated Governments.

35 (4) The Los Angeles County Transportation Commission.

36 (5) The Orange County Transportation Commission.

37 (6) The Riverside County Transportation Commission.

38 (7) The state board.

39 (8) A regional ridesharing agency selected by the other members of the committee.

40 (b) Fees allocated pursuant to Section 40753 shall be used to provide grants for projects
41 to be funded pursuant to a work program developed and adopted by the committee and
42 approved by the south coast district board in the following manner:

43 (1) The work program shall be adopted by an affirmative vote of a majority of the
44 committee members.

45 (2) Upon adoption of the work program, the work program shall be submitted to the
46 south coast district board which, within 60 days, may approve the work program by
47 majority vote of the full south coast district board. If the south coast district board fails to

1 approve the work program within 60 days of receiving it, the work program shall be
2 deemed disapproved. If the south coast district board disapproves the work program, it
3 shall be returned to the committee which shall amend, readopt, and resubmit the work
4 program to the south coast district board for approval or disapproval.

5 (c) The committee shall establish a technical advisory committee to assist in the
6 development of the work program. The technical advisory committee shall include, but not
7 be limited to, representatives of agencies which make up the committee, a representative of
8 the cities from each county within the south coast district, and a representative of the boards
9 of supervisors of each county within the south coast district. The technical advisory
10 committee shall also include one or more persons who have academic training and
11 professional expertise in air pollution control, and one person who is a mechanical engineer
12 specializing in vehicle engines. The technical advisory committee may also include
13 representatives of other public agencies and other interested parties that the committee may
14 determine to be appropriate.

15 (d) On or before July 1, 1993, the committee shall prepare, adopt, and make available to
16 the public clear and concise written guidelines and procedures under which projects
17 proposed for funding under the work program will be reviewed and recommended for
18 funding. The guidelines shall specify that only those projects that include, but are not
19 limited to, the adoption and implementation of transportation control measures,
20 transportation demand management programs, clean fuel and clean vehicle programs, and
21 research and monitoring programs, in compliance with the Clean Air Act Amendments of
22 1990 (P.L. 101-549), the California Clean Air Act of 1988, or the plan prepared pursuant
23 to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3, and that result in
24 direct and tangible reductions in vehicular air pollution, shall be funded pursuant to the
25 work program.

26 (e) The south coast district shall not be eligible for funds allocated pursuant to this
27 section.

28 **Comment.** Section 40755 continues former Health and Safety Code Section 44244 without
29 substantive change.

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

34 **§ 40756. Audit of agencies which receive fee revenues**

35 40756. (a) Any agency which receives fee revenues pursuant to Sections 40750 to
36 40753, inclusive, or Section 40755 shall, at least once every two years, be subject to an
37 audit of each program or project funded. The audit shall be conducted by an independent
38 auditor selected by the south coast district in accordance with Division 2 (commencing with
39 Section 1100) of the Public Contract Code. The district shall deduct any audit costs which
40 will be incurred pursuant to this section prior to distributing fee revenues to cities, counties,
41 or other agencies pursuant to Sections 40750 to 40753, inclusive, and 40755.

42 (b) Upon completion of an audit conducted pursuant to subdivision (a), the south coast
43 district shall do both of the following:

- 44 (1) Make the audit available to the public and to the affected agency upon request.
- 45 (2) Review the audit to determine if the revenues from the fees received by the agency
46 were spent for the reduction of air pollution from motor vehicles pursuant to the California
47 Clean Air Act of 1988 (Chapter 1568 of the Statutes of 1988) or the plan prepared pursuant
48 to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3.

(c) If, after reviewing the audit, the south coast district determines that the revenues from the fees may have been expended in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to the California Clean Air Act of 1988 or the plan prepared pursuant to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3, the district shall do all of the following:

(1) Notify the agency of its determination.

(2) Within 45 days of the notification pursuant to paragraph (1), hold a public hearing at which the agency may present information related to expenditure of the revenues from the fees.

(3) After the public hearing, if the district determines that the agency has expended the revenues from the fees in a manner which is contrary to this chapter or which will not result in the reduction of air pollution from motor vehicles pursuant to the California Clean Air Act of 1988 or the plan prepared pursuant to Article 7 (commencing with Section 36100) of Chapter 5 of Part 3, the district shall withhold these revenues from the agency in an amount equal to the amount which was inappropriately expended. Any revenues withheld pursuant to this paragraph shall be redistributed to the other agencies or, upon approval of the district board, to entities specified in the work programs developed by the mobile source advisory committee, to the extent the district determines that they have complied with this chapter.

Comment. Section 40756 continues former Health and Safety Code Section 44244.1(a)-(c) without substantive change.

§ 40757. Time limitation on use of allocated funds

40757. Any agency which receives fee revenues pursuant to Sections 40750 to 40753, inclusive, or Section 40755 shall expend the funds within one year of the program or project completion date.

Comment. Section 40757 continues former Health and Safety Code Section 44244.1(d) without substantive change.

§ 40758. Trip reduction plans

40758. (a) For each school district that is required to submit a trip reduction plan to the south coast district, the south coast district shall waive any fee that would otherwise be imposed for the submission or review of a trip reduction plan or for the submission or review of any alternative compliance plan, and shall instead recover that amount from the funds collected by the south coast district pursuant to Sections 40750 to 40753, inclusive.

(b) The south coast district shall annually calculate the amount necessary to recover the costs of school district plan reviews, and the Mobile Source Air Pollution Reduction Review Committee shall allocate that amount to the south coast district from the funds collected pursuant to Section 40753.

(c) This section shall remain in effect until January 1, 2010, or until south coast district Rule 2202 is repealed in its entirety, whichever first occurs, unless a later enacted statute that is enacted before that date and before south coast district Rule 2202 is repealed, deletes or extends that date.

Comment. Section 40758 continues former Health and Safety Code Section 44246 without substantive change.

☞ **Staff Note.** This section is subject to a sunset contingency. See subdivision (c). The staff would like to receive input on whether South Coast District Rule 2202 has been repealed.

TITLE 3. REGULATION OF VEHICLE FUELS

CHAPTER 1. FUEL AND FUEL SYSTEMS

Article 1. Fuel

§ 40800. Volatility of gasoline

40800. (a) The state board shall establish, by regulation, maximum standards for the volatility of gasoline at or below nine pounds per square inch Reid vapor pressure as determined by the American Society for Testing and Materials, Test D 323-58, or by an appropriate test determined by the state board, for gasoline sold in this state.

(b) The state board, in adopting the regulations, shall give full consideration to topography and climatic conditions and may provide that the standards imposed thereby shall apply in those areas which the state board determines necessary in order to carry out the purposes of this division.

Comment. Section 40800 continues former Health and Safety Code Section 43830(a)-(b) without change.

§ 40801. Volatility of gasoline and ethyl alcohol blend

40801. (a) Notwithstanding any other law or regulation, until October 1, 1993, any blend of gasoline of at least 10 percent ethyl alcohol shall not result in a violation of any regulation adopted by the state board pursuant to this section and Section 40800 unless the volatility of the gasoline used in the blend exceeds the applicable standard of the state board.

(b) For the purposes of this section and Section 40800, “ethyl alcohol” (also known as ethanol) means fuel that meets all of the following requirements:

(1) It is produced from agricultural commodities, renewable resources, or coal.

(2) It is rendered unsuitable for human consumption at the time of its manufacture or immediately thereafter.

(c) For the purposes of determining the percentage of ethyl alcohol contained in gasoline, the volume of alcohol includes the volume of any denaturant approved for that purpose by the United States Bureau of Alcohol, Tobacco and Firearms, provided these denaturants do not exceed 5 percent of the volume of alcohol (including denaturants).


(d) From October 1, 1993, to December 31, 1995, inclusive, any blend of gasoline of at least 10 percent ethyl alcohol shall not result in a violation of the Reid vapor pressure standard adopted by the state board pursuant to this section and Section 40800 unless it is determined by the state board on the basis of independently verifiable automobile exhaust and evaporative emission tests performed on a representative fleet of automobiles that the blend would result in a net increase in the ozone forming potential of the total emissions, excluding emissions of oxides of nitrogen, when compared to the total emissions, excluding emissions of oxides of nitrogen, from the same automobile fleet using gasoline that meets all applicable specifications for Phase I gasoline established by the state board.

(e) On and after January 1, 1996, any blend of gasoline of at least 10 percent ethyl alcohol shall not result in a violation of the Reid vapor pressure standard adopted by the state board pursuant to this section and Section 40800 unless it is determined by the state board on the basis of independently verifiable automobile exhaust and evaporative emission tests performed on a representative fleet of automobiles that the blend would result in a net increase in the ozone forming potential of the total emissions, excluding emissions of

1 oxides of nitrogen, when compared to the total emissions, excluding emissions of oxides
2 of nitrogen, from the same automobile fleet using gasoline that meets all applicable
3 specifications for Phase II gasoline established by the state board.

4 (f) Notwithstanding subdivisions (d) and (e), at any time that the state board adopts, by
5 regulation, standards specifying acceptable levels for emissions of oxides of nitrogen for all
6 reformulated fuels, any blend of gasoline of at least 10 percent ethyl alcohol that exceeds
7 those levels no longer qualifies for an exemption from the Reid vapor pressure standard
8 established by the state board.

9 **Comment.** Section 40801 continues former Health and Safety Code Section 43830(c)-(h)
10 without substantive change. Uncodified statutory provisions applicable to former Health and
11 Safety Code Section 43830 now apply to this section. See 1988 Cal. Stat. ch. 1262, § 1
12 (legislative determination).

13  **Staff Note.** Subdivisions (a) and (d) of the proposed section state standards that applied
14 in the past. These provisions appear to be obsolete. The staff would like to receive input on
15 whether these subdivisions continue to serve a purpose.

16 **§ 40802. Degree of unsaturation of gasoline in South Coast Air Basin**

17 40802. (a) The state board shall establish, by regulation, maximum standards for the
18 degree of unsaturation at a bromine number 30 as established by the American Society for
19 Testing and Materials test D 1159-66, or by an appropriate test determined by the state
20 board, for gasoline sold in the South Coast Air Basin designated by the state board.

21 (b) The state board, in adopting the regulations, shall give full consideration to climatic
22 conditions and may provide that the maximum standards imposed thereby shall be
23 applicable only during those periods of time which the state board determines necessary in
24 order to carry out the purposes of this division.

25 **Comment.** Section 40802 continues former Health and Safety Code Section 43831 without
26 substantive change. The former unnumbered paragraphs have been designated as
27 subdivisions.

28 **§ 40803. Fuel or fuel additive claimed to reduce emissions**

29 40803. (a) The state board may request, from any person who advertises, or causes to be
30 advertised, in any manner or claim that a fuel or fuel additive reduces motor vehicle exhaust
31 emissions, a report detailing the data which supports the advertiser's claims of emission
32 reduction by that fuel or fuel additive.

33 (b) The state board may conduct, and may request the Department of Consumer Affairs
34 to assist the state board in, any further investigation that may appear warranted under the
35 circumstances.

36 (c) If the state board, or the state board and the Department of Consumer Affairs if the
37 latter has assisted in the investigation, determines that the fuel or fuel additive is not
38 substantially as effective as it is claimed to be in the advertisement for it, the state board
39 shall report the findings to the Attorney General for whatever action under the Business and
40 Professions Code or other law the Attorney General finds appropriate.

41 **Comment.** Section 40803 continues former Health and Safety Code Section 43832 without
42 substantive change. The former unnumbered paragraphs have been designated as
43 subdivisions.

1 **§ 40804. Evaluation of pollution reduction fuel additives**

2 40804. (a) The state board shall establish criteria for the evaluation of the effectiveness
3 of, and may conduct tests respecting the composition or the chemical or physical properties
4 of, any motor vehicle fuel additive sold, or proposed to be sold, in this state. The tests shall
5 be designed to determine whether the additive will reduce or eliminate from vehicular
6 sources any substance found to affect human health or impair the obtainment of the state
7 board's ambient air quality standards, or whether, in specified fuels, a particular fuel
8 additive would result in a significant and beneficial reduction in vehicular emissions
9 commensurate with the purposes of this division and would not have a deleterious effect
10 upon the operation of any vehicle or any motor vehicle pollution control device which is in
11 general use.

12 (b) The state board may also engage independent laboratories to conduct the tests under
13 test procedures specified by the state board.

14 (c) Any manufacturer may apply to the state board to have its additive tested pursuant to
15 subdivision (a). The state board may charge an application fee, not to exceed the cost of the
16 tests, for the applications.

17 **Comment.** Section 40804 continues former Health and Safety Code Section 43833 without
18 substantive change.

19 **§ 40805. Report on unfinished fuels and fuel blending compounds at sites other than**
20 **refineries**

21 40805. On or before May 1, 1992, the State Air Resources Board shall report to the
22 Legislature on the nature, types, and extent of unfinished fuels and fuel blending
23 components sold or blended at locations other than refineries. The report shall include
24 recommendations concerning the need for appropriate legislation.

25 **Comment.** Section 40805 continues former Health and Safety Code Section 43013.5(b)
26 without change.

27 ☞ **Staff Note.** This section sets a 1992 deadline for submission of the specified report. It
28 appears to be obsolete. The staff would like to receive input on two questions: (1) Was the
29 report submitted? (2) Does the section still serve a useful purpose?

30 **Article 2. Fuel Systems**

31 **§ 40850. Fill pipes and fuel tank openings.**

32 40850. (a) The state board shall, by March 1, 1976, adopt specifications for the fill pipes
33 and openings of motor vehicle fuel tanks to ensure that the size, design, and location of the
34 fill pipe and opening permit adequate access to and interfacing with gasoline-dispensing
35 nozzles for the purpose of vapor control.


36 (b)(1) No new 1977 or later model year gasoline-powered motor vehicle may be sold,
37 offered for sale, or registered in this state unless the vehicle is in compliance with the
38 specifications adopted by the state board pursuant to subdivision (a).

39 (2) The state board may exempt from the specifications those classifications of motor
40 vehicles for which the state board determines the specifications are technologically
41 infeasible.

42 (3) The state board also may waive the provisions of this subdivision for any 1977 model
43 year gasoline-powered motor vehicle, provided that the state board makes a finding, based
44 upon evidence presented by the manufacturer of the vehicle, that inadequate lead time exists

1 for any required vehicle redesign. The state board may make the waiver applicable only to
2 specified body styles of the vehicle.

3 **Comment.** Section 40850 continues former Health and Safety Code Section 43835 without
4 substantive change. The former unnumbered paragraphs of subdivision (b) have been
5 numbered.

6  **Staff Note.** Subdivision (a) specifies a deadline for the adoption of certain
7 specifications. This deadline provision may be obsolete. The staff would like to receive input
8 on two questions: (1) Were the specifications adopted as required? (2) Does the deadline
9 stated in subdivision (a) still serve a useful purpose? Subdivision (b) also appears to contain
10 obsolete elements. The reference to “new 1977” vehicles in paragraph (1) is probably
11 obsolete. Similarly, the waiver in paragraph (3), for 1977 vehicles appears to be obsolete.

12 **§ 40851. Fuel systems powered by a fuel other than gasoline or diesel**

13 40851. The state board may certify the fuel system of any motor vehicle powered by a
14 fuel other than gasoline or diesel which meets the standards specified by subdivision (a) of
15 Section 40403 and adopt test procedures for the certification.

16 **Comment.** Section 40851 continues former Health and Safety Code Section 43006 without
17 substantive change.

18 Article 3. Fuel System Evaporative Loss Control Devices

19 **§ 40900. Criteria for certification**

20 40900. The state board shall adopt, by regulation, criteria for the certification of fuel
21 system evaporative loss control devices for installation on motor vehicles not equipped with
22 a device when first sold. The criteria shall include, but not be limited to, requirements that
23 the device:

24 (a) Shall not allow fuel system evaporative loss greater than six grams of hydrocarbons
25 per test.

26 (b) Shall equal or exceed the performance criteria established by the state board for new
27 devices required on new motor vehicles or, in the alternative, shall have an expected useful
28 life of at least 50,000 miles of operation.

29 **Comment.** Section 40900 continues former Health and Safety Code Section 43820 without
30 substantive change.

31 **§ 40901. Additional criteria**

32 40901. In adopting criteria for the certification of fuel system evaporative loss control
33 devices, the state board shall take into consideration the cost of the device and its
34 installation, its durability, the ease and facility of determining whether the device, when
35 installed on a motor vehicle, is properly functioning, and any other factors which, in the
36 opinion of the state board, render the device suitable or unsuitable for the control of motor
37 vehicle air pollution or for the health, safety, and welfare of the public.

38 **Comment.** Section 40901 continues former Health and Safety Code Section 43821 without
39 substantive change.

40 **§ 40902. Limitation on mandated installation**

41 40902. The installation of a certified fuel system evaporative loss control device on used
42 motor vehicles shall not be mandated except by statute.

Comment. Section 40902 continues former Health and Safety Code Section 43823 without change.

§ 40903. Standards and test procedures for certification

40903. (a) The state board may adopt, by regulation, standards and test procedures for the certification of fuel system evaporative loss control devices on new motor vehicles in the absence of any applicable federal regulations.

(b) No new motor vehicle may be sold and registered in this state unless it conforms to the regulations adopted by the state board under this section.


Comment. Section 40903 continues former Health and Safety Code Section 43824 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

§ 40904. Auxiliary gasoline fuel tank evaporative loss control devices

40904. (a) The state board shall establish standards or criteria for the certification of auxiliary gasoline fuel tank evaporative loss control devices or systems on vehicles which are required, pursuant to this part or the National Emission Standards Act (42 U.S.C. Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550), to be equipped with a fuel system evaporative loss control device to prevent as much evaporation of gasoline into the air from auxiliary fuel tanks as is technologically feasible.

(b) For the purpose of this section, and Section 27156.1 of the Vehicle Code, an “auxiliary gasoline fuel tank” is a fuel tank which is designed and intended by its manufacturer for installation on, or which is installed on, a vehicle operating on gasoline and which is connected to the original fuel system, as defined in Section 30270 of this code, but is not a gasoline fuel tank which is added to a certified device on a used vehicle if the certification included the capability of handling evaporation from the tank.

Comment. Section 40904 continues former Health and Safety Code Section 43834 without substantive change. The former reference to Sections 1857f-1 to 1857f-7 of Title 42 of the U.S. Codes is obsolete and has been replaced with a reference to Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550 of Title 42 of the U.S. Codes.

 **Staff Note.** Former Health and Safety Code Sections 43840-43844 established an experimental program testing alcohol based fuels in the fleet vehicles of Ventura County. That program was to end on January 1, 1988. See Health and Safety Code Section 43843(a). Thus, these sections are obsolete and have not been continued. The staff would like to receive input on whether there is any reason to preserve these sections.

CHAPTER 2. PENALTIES

Article 1. Standard Penalty Provisions

§ 41000. Penalties

41000. (a) Any person who knowingly violates any regulation adopted pursuant to this part by the state board pertaining to motor vehicle fuels is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six months, or both, for each violation.

(b) The recovery of civil penalties pursuant to Section 40300 precludes prosecution pursuant to this section for the same offense. When the executive officer refers a violation

1 to a prosecuting attorney, the filing of a criminal complaint is grounds requiring the
2 dismissal of any civil action brought pursuant to Section 40300 for the same offense.

3 **Comment.** Section 41000 continues former Health and Safety Code Section 43020 without
4 substantive change.

5 **§ 41001. Motor vehicle fuel distributors**

6 41001. (a) For purposes of this section, “motor vehicle fuel distributor” means any
7 person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an
8 ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any
9 point between a production or import facility and a retail outlet, or sells, offers for sale, or
10 supplies motor vehicle fuel to motor vehicle fuel retailers.

11 (b) Any motor vehicle fuel distributor who conducts business within the state shall,
12 annually on January 1, inform the state board in writing of the distributor’s principal place
13 of business which shall be a physical address and not a post office box, and any other place
14 of business at which company records are maintained or refining activities are conducted.

15 (c) The state board shall supply each complying motor vehicle fuel distributor with a
16 certificate of compliance with this section not later than June 30. The certificate shall be
17 effective from July 1 of the year of issuance through June 30 of the following year.

18 (d) All motor vehicle fuel distributors shall maintain complete records of each purchase,
19 delivery, or supply of motor vehicle fuel for a period of not less than two years in the
20 physical locations reported pursuant to subdivision (b) and shall not move the records to
21 another physical location without notifying the state board of the new location. A complete
22 record for each delivery shall consist of not less than a copy, or the information contained
23 therein, of the bills of lading from the refinery or bulk terminal from which the fuel is
24 received, the delivery ticket or receipt showing the location of the fuel at the time of sale,
25 and the invoice showing the purchaser of the fuel. All those records may be kept in
26 physical or electronic format and are subject to inspection and duplication by the state
27 board.

28 (e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision
29 (b) or (d) is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each
30 day of noncompliance.

31 (f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel
32 distributor who is not in possession of a current certificate of compliance as described in
33 subdivision (c). Any person who transports or provides vehicles to transport motor vehicle
34 fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand
35 dollars (\$10,000) per day as well as any penalties prescribed by Section 41963 of the
36 Health and Safety Code. However, any person who transports, or provides vehicles to
37 transport, motor vehicle fuel for a distributor who is in possession of a current certificate of
38 compliance shall not be liable for any penalties under this subdivision or Section 41963
39 unless that person has specific knowledge of noncompliance.


40 (g) Any retailer who knowingly sells or supplies motor vehicle fuel which was delivered
41 to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for
42 a civil penalty not to exceed ten thousand dollars (\$10,000) for each transaction.

43 (h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the
44 state board, after both oral and written notice to cease have been delivered to the owner,
45 manager, or attendant on duty at the facility, and upon failure to comply with that notice, is
46 subject to the issuance of a cease and desist order by the state board and a penalty of ten
47 thousand dollars (\$10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified wholesale petroleum distributors, and shall mail a copy to every licensed transporter of petroleum products.

(j) This section shall become operative January 1, 1999.

Comment. Section 41001 continues former Health and Safety Code Section 43021 without substantive change.

 **Staff Note.** Subdivision (f) refers to penalties prescribed in Health and Safety Code Section 41963. Section 41963 does not exist. The staff would like to receive input on how to correct this erroneous reference without altering existing law.

§ 41003. Analysis of sulfur content

41003. For purposes of implementing and enforcing Sections 41000 and 41001, the State Air Resources Board shall purchase and install a wavelength dispersive XRF spectrometer with the capability to analyze gasoline and diesel fuels and other petroleum products for sulfur content according to ASTM procedures specified by regulation.

Comment. Section 41003 continues former Health and Safety Code Section 43013.5(a) without substantive change.

Article 2. Updated Penalty Provisions

§ 41050. Legislative intent

41050. It is the intent of the Legislature in the enactment of this article to update the penalty provisions for violations of fuel regulations to ensure that the appropriate tools are available to effectively and fairly enforce state law. In enacting this article, it is not the intent of the Legislature to modify penalty settlements beyond historic levels. The civil and administrative penalty provisions in this article are designed to give the state board an effective, efficient, and flexible tool to fairly enforce all violations.

Comment. Section 41050 continues former Health and Safety Code Section 43025 without substantive change.

§ 41051. Motor vehicle fuel distributors

41051. (a) For purposes of this section, “motor vehicle fuel distributor” means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state shall, annually on January 1, inform the state board in writing of the distributor’s principal place of business, which shall be a physical address and not a post office box, and any other place of business at which distributor records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. A complete

1 record for each delivery shall consist of not less than a copy, or the information contained
2 therein, of the bills of lading from the refinery or bulk terminal from which the fuel is
3 received, the delivery ticket or receipt showing the location of the fuel at the time of sale,
4 and the invoice showing the purchaser of the fuel. All those records may be kept in
5 physical or electronic format and are subject to inspection and duplication by the state
6 board.

7 (e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision
8 (b) or (d) is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each
9 day of noncompliance.

10 (f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel
11 distributor who is not in possession of a current certificate of compliance as described in
12 subdivision (c). Any person who transports, or provides vehicles to transport, motor
13 vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten
14 thousand dollars (\$10,000) per day. However, any person who transports, or provides
15 vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current
16 certificate of compliance shall not be liable for any penalties under this subdivision unless
17 that person has specific knowledge of noncompliance.

18 (g) Any retailer who knowingly sells or supplies motor vehicle fuel which was delivered
19 to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for
20 a civil penalty not to exceed ten thousand dollars (\$10,000) for each transaction.

21 (h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the
22 state board, after both oral and written notice to cease and desist have been delivered to the
23 owner, manager, or attendant on duty at the retailer facility, and upon failure to comply
24 with that notice, is subject to the issuance of a cease and desist order by the state board and
25 a penalty of ten thousand dollars (\$10,000) for each day of noncompliance with the cease
26 and desist order.

27 (i) The state board shall annually compile and publish a complete listing of all certified
28 motor vehicle fuel distributors, and shall mail a copy to every licensed transporter of
29 petroleum products.

30 **Comment.** Section 41051 continues former Health and Safety Code Section 43026 without
31 change.

32 **§ 41052. Civil penalties for acts not included within § 41051**

33 41052. The following civil penalties apply to the following acts not included within
34 Section 41051:

35 (a) Any person who willfully and intentionally violates any provision of this part, or any
36 rule, regulation, permit, variance, or order of the state board, pertaining to fuel
37 requirements and standards, is liable for a civil penalty of not more than two hundred fifty
38 thousand dollars (\$250,000), and the prosecuting agency shall include a claim for an
39 additional penalty in the amount of any economic gain that otherwise would not have been
40 realized from the sale of the fuel determined to be in noncompliance.

41 (b) Any person who negligently violates any provision of this part, or any rule,
42 regulation, permit, variance, or order of the state board, pertaining to fuel requirements and
43 standards, exclusive of the documentation requirements specified in subdivision (d), is
44 liable for a civil penalty of not more than fifty thousand dollars (\$50,000).

45 (c) Any person who violates any provision of this part, or any rule, regulation, permit,
46 variance, or order of the state board, pertaining to fuel requirements and standards,
47 exclusive of the documentation requirements specified in subdivision (d), is strictly liable
48 for a civil penalty of not more than thirty-five thousand dollars (\$35,000).

(d) Any person who enters false information in, or fails to keep, any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, is strictly liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000). In determining the amount of the penalty to be assessed under this subdivision, the court, or in reaching any settlement, the Attorney General or the state board, shall take into consideration, in addition to subdivision (b) of Section 41057, the specific circumstances and intent of the defendant in making the false entry or in failing to keep the document.

Comment. Section 41052 continues former Health and Safety Code Section 43027 without substantive change.

§ 41053. Administrative civil penalties

41053. As an alternative to any civil penalties prescribed under this part, the state board may impose administrative civil penalties for a violation of this part, or any rule, regulation, permit, variance, or order of the state board, pertaining to fuel requirements and standards, if the state board has adopted rules and regulations specifying procedures for the imposition and amounts of those penalties. No administrative civil penalty levied pursuant to this section shall exceed twenty-five thousand dollars (\$25,000) for each day on which there is a violation or three hundred thousand dollars (\$300,000) in total. However, nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law which exceed twenty-five thousand dollars (\$25,000) for each day on which there is a violation or three hundred thousand dollars (\$300,000) in total, except that the state board shall not rely on any provision of the Business and Professions Code.

Comment. Section 41053 continues former Health and Safety Code Section 43028 without change.

§ 41054. Penalties to eliminate economic benefits from noncompliance

41054. In an action to recover civil penalties pursuant to subdivisions (b) and (c) of Section 41052, a proceeding to assess administrative civil penalties pursuant to Section 41053, or a criminal prosecution pursuant to Section 41000, the prosecuting agency shall include a claim for an additional penalty designed to eliminate the economic benefits from noncompliance against any person who violates any provision of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to fuel requirements or standards as follows:

(a) For violations of gasoline requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and nine thousand one hundred dollars (\$9,100) per ton, which is the maximum calculated cost-effectiveness for California Phase 2 Reformulated Gasoline.

(b) For violations of diesel fuel requirements, the amount of the penalty shall equal the product of the number of tons of incremental increased vehicular emissions resulting from the manufacture, distribution, and sale of the specified volume of noncompliant fuel and five thousand two hundred dollars (\$5,200) per ton, which is the maximum calculated cost-effectiveness for California low sulfur, low aromatics diesel fuel.

(c) To ensure that the penalties under subdivisions (a) and (b) continue to adequately reflect the goals of this section, the following shall occur annually:

(1) The cost-effectiveness values set forth in subdivisions (a) and (b) shall be adjusted to reflect the change in the annual average nationwide producers price index of industrial

1 commodities, less fuels and related products and power, published by the United States
2 Bureau of Labor Statistics, averaged over the previous 5 years.

3 (2) The methodologies used to calculate the excess emissions from noncompliant fuels
4 shall be reviewed by the state board and updated as necessary.

5 **Comment.** Section 41054 continues former Health and Safety Code Section 43029 without
6 substantive change.

7 **§ 41055. Continued occurrence as separate offenses**

8 41055. (a) For the penalties prescribed in Sections 41052 and 41053, each day during
9 any portion of which a violation occurs is a separate offense.

10 (b) In applying penalties under Section 41052 or 41053 for violations based solely upon
11 the state board's review of monthly production records, each day within a month for which
12 a violation occurs is a separate violation.

13 **Comment.** Section 41055 continues former Health and Safety Code Section 43030(a)-(b)
14 without substantive change.

15 **§ 41056. Prosecution under other statutes**

16 41056. The recovery of civil or administrative civil penalties pursuant to this article
17 precludes prosecution pursuant to Section 41000 for the same offense. When the executive
18 officer refers a violation to a prosecuting attorney, the filing of a criminal complaint is
19 grounds requiring the dismissal of any civil action or administrative proceedings brought
20 pursuant to this chapter for the same offense.

21 **Comment.** Section 41056 continues former Health and Safety Code Section 43030(c)
22 without substantive change.

23 **§ 41057. Assessment and recovery of penalties**

24 41057. (a) The civil or administrative civil penalties prescribed in this article shall be
25 assessed and recovered either in a civil action brought in the name of the people of the State
26 of California by the Attorney General or by the state board, or in administrative hearings
27 established pursuant to regulations adopted by the state board.

28 (b) In determining the amount assessed, the court, the Attorney General, or the state
29 board, in reaching any settlement, shall take into consideration all relevant circumstances,
30 including, but not limited to, all of the following:

31 (1) The extent of harm to public health, safety, and welfare caused by the violation.

32 (2) The nature and persistence of the violation, including the magnitude of the excess
33 emissions.

34 (3) The compliance history of the defendant, including the frequency of past violations.

35 (4) The preventive efforts taken by the defendant, including the record of maintenance
36 and any program to ensure compliance.

37 (5) The innovative nature and the magnitude of the effort required to comply, and the
38 accuracy, reproducibility, and repeatability of the available test methods.

39 (6) The efforts to attain, or provide for, compliance.

40 (7) The cooperation of the defendant during the course of the investigation and any action
41 taken by the defendant, including the nature, extent, and time of response of any action
42 taken to mitigate the violation.

43 (8) For a person who owns a single retail service station, the size of the business.

44 **Comment.** Section 41057 continues former Health and Safety Code Section 43031 without
45 substantive change.

1 **§ 41058. Disposition of revenues from penalties**

2 41058. The revenues from penalties recovered by the state board pursuant to this article
3 shall be deposited in the Air Pollution Control Fund and shall only be expended by the state
4 board for environmental cleanup, abatement, or pollution prevention technology.

5 **Comment.** Section 41058 continues former Health and Safety Code Section 43031.5
6 without substantive change.

7 **§ 41059. Report to legislative committees**

8 41059. On or before June 30, 1998, the state board shall report to the Assembly
9 Committee on Natural Resources, the Assembly Committee on Transportation, the Senate
10 Committee on Criminal Procedure, and the Senate Committee on Transportation all
11 violations that are subject to this article, any settlements reached, and the rate of compliance
12 with any requirements that are subject to this article.

13 **Comment.** Section 41059 continues former Health and Safety Code Section 43032 without
14 substantive change.

15 **§ 41060. Duration of chapter**

16 41060. This article shall remain in effect only until January 1, 1999, and as of that date is
17 repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or
18 extends that date.

19 **Comment.** Section 41060 continues former Health and Safety Code Section 43033 without
20 substantive change.

21 **CHAPTER 3. VARIANCES FROM GASOLINE SPECIFICATIONS**

22 **§ 41100. Legislative findings, declarations, and intent**

23 41100. (a) The Legislature finds and declares that variances from the state board's
24 gasoline specifications may be needed if gasoline producers cannot meet the specifications
25 as required due to circumstances beyond their reasonable control, and that the state board's
26 process for granting variances from fuel specifications should be clarified.

27 (b) It is the intent of the Legislature that the variance process consider the impacts of
28 granting the variance on all parties, including the applicant, the public, the producers of
29 complying fuel, and upon air quality.

30 **Comment.** Section 41100 continues former Health and Safety Code Section 43013.2(a)
31 without substantive change.

32 **§ 41101. Authority to grant variances**

33 41101. The state board may grant variances from gasoline specifications adopted by the
34 state board pursuant to Sections 40200 to 40205, inclusive, and Sections 40100 to 40103,
35 inclusive. In granting a variance, the board may impose fees and conditions.

36 **Comment.** Section 41101 continues former Health and Safety Code Section 43013.2(b)
37 without substantive change.

38 **§ 41102. Implementing regulations**

39 41102. The state board shall adopt regulations to implement this article in accordance
40 with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the

Government Code. The regulations shall establish guidelines for the consideration of variances and the imposition of fees and conditions. Any fees or conditions shall be imposed in a fair and equitable manner consistent with the regulations. The regulations shall include methods for estimating excess emissions and factors to be considered in determining what is beyond the reasonable control of the applicant. The regulations also shall establish a schedule of fees to be paid by an applicant for a variance to cover the reasonable and necessary costs to the state board in processing the variance. The state board shall adopt initial regulations as emergency regulations after conducting at least one public workshop. The initial adoption of emergency regulations following the effective date of Chapter 675 of the Statutes of 1995 shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Comment. Section 41102 continues former Health and Safety Code Section 43013.2(c) without substantive change.

§ 41103. Disposition of fees

41103. All variance fee revenues collected pursuant to this article by the state board, except those fees paid by an applicant for a variance to cover the reasonable and necessary costs to the state board for processing the variance, shall be transmitted to the Treasurer for deposit in the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 43804. All money deposited in the account pursuant to this article shall be available, upon appropriation by the Legislature, to implement a program for accelerated retirement of light-duty vehicles to achieve the emission reductions required by the M-1 Strategy of the 1994 State Implementation Plan.

Comment. Section 41103 continues former Health and Safety Code Section 43013.2(d) without substantive change.

§ 41104. Basis for decisions

41104. (a) In considering whether to grant a variance, and with regard to any fees and conditions that are imposed as part of the variance, the state board shall take into account whether granting the variance will place the applicant at a cost advantage over other persons, including those persons who produce complying gasoline.

(b) Any determination of the state board, or the executive officer of the state board pursuant to the authority delegated pursuant to Section 31108, regarding the issuance of any variance from gasoline specifications shall be based solely upon substantial evidence in the record of the variance proceeding.

Comment. Section 41104(a) continues former Health and Safety Code Section 43013.2(e) without substantive change. Section 41104(b) continues the first sentence of former Health and Safety Code Section 43013.2(f) without substantive change.

§ 41105. Duration of variance

41105. (a) The variance shall be valid for a period not exceeding 120 days. The variance may be extended, subject to this article, for up to 90 additional days, upon a showing of need. The board shall grant a variance only for the minimum period required to attain compliance.

(b) If a physical catastrophe occurs to a producer of complying gasoline, the state board may extend a variance upon the showing of need. Notwithstanding subdivision (a) or subdivision (b) of Section 41104, any variance extension related to a physical catastrophe shall be approved by the state board. As used in this subdivision, "physical catastrophe"

means a sudden unforeseen emergency beyond the reasonable control of the refiner, causing the severe reduction or total loss of one or more critical refinery units that materially impact the refiner's ability to produce complying gasoline. "Physical catastrophe" does not include events which are not physical in nature such as design errors or omissions, financial or economic burdens, or any reduction in production that is not the direct result of qualifying physical damage.

Comment. Section 41105(a) continues the last three sentences of former Health and Safety Code Section 43013.2(f) without substantive change. The reference in the first sentence of subdivision (a) to the date after which that sentence applied (March 1, 1996) is obsolete and has not been continued.

Section 41105(b) continues former Health and Safety Code Section 43013.2(g) without substantive change.

§ 41106. Public notice of decision

41106. Notwithstanding any other provision of law, except in the case of emergency variances, the state board shall provide at least 10 days' public notice of its consideration of any variance or extension.

Comment. Section 41106 continues former Health and Safety Code Section 43013.2(h) without change. Former Health and Safety Code Section 43013.2(i) provided that subdivisions (b) and (e) of that section were enacted as a declaration of then-existing law. This transitional provision has not been continued.

TITLE 4. REGULATION OF VEHICLE EMISSIONS

CHAPTER 1. GENERAL PROVISIONS

§ 41300. Compliance with district rules

41300. Whenever any motor vehicle is required to be equipped with any motor vehicle pollution control device by rules and regulations adopted by any district pursuant to Section 41859, the motor vehicle shall be equipped with the device.

Comment. Section 41300 continues former Health and Safety Code Section 43007 without substantive change.

§ 41301. Compliance with federal standards

41301. Except as provided by Sections 41500 and 41503 and Chapter 4 (commencing with Section 41800), all motor vehicles required pursuant to the National Emission Standards Act (42 U.S.C. Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550) and the standards and regulations promulgated thereunder, to be equipped with motor vehicle pollution control devices, shall be equipped with the devices required by that act.

Comment. Section 41301 continues former Health and Safety Code Section 43008 without substantive change. The former reference to Sections 1857f-1 to 1857f-7 of Title 42 of the U.S. Code is obsolete and has been replaced with a reference to Sections 7521 to 7525, inclusive, 7541 to 7547, inclusive, and 7550 of Title 42 of the U.S. Code.

1 **§ 41302. State vehicle pollution emission regulations**

2 41302. Except as otherwise provided in Section 40401, every motor vehicle subject to
3 this part shall meet the standards adopted by the state board pursuant to Sections 27157 and
4 27157.5 of the Vehicle Code.

5 **Comment.** Section 41302 continues former Health and Safety Code Section 43009 without
6 substantive change.

7 **§ 41303. Evaluation of effectiveness of devices**

8 41303. (a) The state board shall establish criteria for the evaluation of the effectiveness of
9 motor vehicle pollution control devices. After the establishment of the criteria, the state
10 board shall evaluate motor vehicle pollution control devices which have been submitted to it
11 for testing.

12 (b) The criteria established by the state board pursuant to subdivision (a) shall include,
13 but need not be limited to:

14 (1) Provisions for the testing of vehicles on which a device is installed, when an
15 engineering evaluation of the device indicates testing is warranted.

16 (2) A requirement that independent test data be supplied to the state board for each device
17 it is requested to test.

18 **Comment.** Section 41303 continues former Health and Safety Code Section 43011 without
19 substantive change.

20 **§ 41304. Experimental devices**

21 41304. The state board may issue permits for the testing of experimental motor vehicle
22 pollution control devices installed in used motor vehicles, or for the testing of experimental
23 or prototype motor vehicles which appear to have very low emission characteristics.

24 **Comment.** Section 41304 continues former Health and Safety Code Section 43014 without
25 change.

26 **CHAPTER 2. GENERAL ENFORCEMENT PROVISIONS**

27 **§ 41400. “Tampering” and “disabling” defined**

28 41400. As used in Section 41407, the terms “tampering” and “disabling” mean an
29 unauthorized modification, alteration, removal, or disconnection.

30 **Comment.** Section 41400 continues former Health and Safety Code Section 43012(j)
31 without substantive change.

32 ☞ **Staff Note.** Health and Safety Code Section 43012(j) defines “tampering” and
33 “disabling” for the purpose of that section. The staff would like to receive input on whether
34 the scope of application of that definition should be broadened to include other sections that use
35 the terms but do not define them. See, e.g., proposed Sections 41403, 42307, 43003, 43007,
36 43900, 43904, 43905, 44409, 44412.

37 **§ 41401. Remedial action by vehicle manufacturer**

38 41401. (a) If, based on a review of information derived from a statistically valid and
39 representative sample of vehicles, the state board determines that a substantial percentage of
40 any class or category of vehicles certified under the optional standards of Section 41501,
41 and of Section 1960.15 of Title 13 of the California Administrative Code, exhibits, prior to
42 75,000 miles or seven years, whichever occurs first, an identifiable, systematic defect in a

1 component listed in paragraph (2) of subdivision (c) of Section 1960.15 of Title 13 of the
2 California Administrative Code, which causes a significant increase in emissions above
3 those exhibited by vehicles free of defects and of the same class or category and having the
4 same period of use and mileage, the state board may invoke its enforcement authority under
5 Section 41758 to require remedial action by the vehicle manufacturer. The remedial action
6 shall be limited to owner notification and repair or replacement of the defective component.
7 As used in this section, the term “defect” shall not include failures which are the result of
8 abuse, neglect, or improper maintenance.

9 (b) Nothing in this section shall limit or otherwise affect the recall authority of the state
10 board, except as provided in subdivision (a).

11 **Comment.** Section 41401 continues former Health and Safety Code Section 43009.5
12 without substantive change.

13 **§ 41402. Inspection on premises of owner or operator**

14 41402. Notwithstanding Sections 41404 to 41409, inclusive, for the purpose of
15 enforcing or administering Section 27156 of the Vehicle Code, the executive officer of the
16 state board or an authorized representative of the executive officer, upon presentation of
17 credentials or, if necessary under the circumstances, after obtaining a warrant pursuant to
18 Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has
19 the right of entry to any premises owned, operated, used, leased, or rented by an owner or
20 operator of any vehicle operated for commercial purposes in order to inspect that motor
21 vehicle, secure emission samples therefrom, or inspect and copy any maintenance, use, or
22 other records pertaining to that vehicle.

23 **Comment.** Section 41402 continues former Health and Safety Code Section 43008.6(a)
24 without substantive change.

25 **§ 41403. Civil penalty for violation of Vehicle Code 27156**

26 41403. (a) The state board may collect a civil penalty not to exceed one thousand five
27 hundred dollars (\$1,500) for each violation of Section 27156 of the Vehicle Code. Any
28 penalties shall be paid to the Treasurer for deposit in the Air Pollution Control Fund.

29 (b) The civil penalty specified in subdivision (a) may be collected for one or more
30 violations involving the tampering with or disabling of a gasoline-powered vehicle’s air
31 injection, exhaust gas recirculation, crankcase ventilation, fuel injection, carburetion,
32 ignition timing, or evaporative control system, fuel filler neck restrictor, oxygen sensor or
33 related electronic controls, or catalytic converter, or for the use of leaded fuel in a vehicle
34 certified for the use of unleaded fuel only.

35 (c) The civil penalty specified in subdivision (a) may not be collected for a violation that
36 is related to any tampering or disabling of a gasoline-powered vehicle specified in
37 subdivision (b) by a rental customer of that vehicle, including, but not limited to, a missing
38 gasoline filler cap and a disconnected or missing heated air intake tube or vacuum hose.
39 However, if more than 20 percent of an owner’s or operator’s gasoline-powered vehicles
40 are found to be nonconforming during each of three consecutive inspections conducted 30
41 or more days apart during any one-year period, the civil penalty specified in subdivision (a)
42 applies and shall be collected for each time a vehicle is found in a nonconforming
43 condition.

44 **Comment.** Section 41403 continues former Health and Safety Code Section 43008.6(b)-
45 (d) without substantive change.

1 **§ 41404. Authority to inspect vehicle on premises of dealer**

2 41404. (a) For the purpose of enforcing or administering any federal, state, or local law,
3 order, regulation, or rule relating to vehicular sources of emissions, the executive officer of
4 the state board or an authorized representative of the executive officer, or a representative of
5 the department, upon presentation of credentials or, if necessary under the circumstances,
6 after obtaining an inspection warrant pursuant to Title 13 (commencing with Section
7 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises
8 owned, operated, used, leased, or rented by any new or used car dealer, as defined in
9 Sections 285, 286, and 426 of the Vehicle Code, for the purpose of inspecting any vehicle
10 for which emissions standards have been enacted or adopted or for which emissions
11 equipment is required and which is situated on the premises for the purpose of emission-
12 related maintenance, repair, or service, or for the purpose of sale, lease, or rental, whether
13 or not the vehicle is owned by the dealer. The inspection may extend to all emission-related
14 parts and operations of the vehicle, and may require the on-premises operation of an engine
15 or vehicle, the on-premises securing of samples of emissions from the vehicle, and the
16 inspection of any records which relate to vehicular emissions required by the
17 Environmental Protection Agency or by any state or local law, order, regulation, or rule to
18 be maintained by the dealer in connection with the dealer's business.

19 (b) The right of entry for inspection under Sections 41404 to 41409, inclusive, is limited
20 to the hours during which the dealer is open to the public, except when the entry is made
21 pursuant to warrant or whenever the executive officer or an authorized representative, or a
22 representative of the department, has reasonable cause to believe that a violation of any
23 federal, state, or local law, order, regulation, or rule has been committed in his or her
24 presence. No vehicle shall be inspected pursuant to Sections 41404 to 41409, inclusive,
25 more than one time without an inspection warrant or without reasonable cause unless the
26 vehicle undergoes a change of ownership or the inspection reveals that the vehicle has
27 failed to comply with required emissions standards or equipment, in which case one
28 additional inspection may be made to verify the violation or to verify that the violation has
29 been corrected.

30 (c) Sections 41404 to 41409, inclusive, provide the exclusive authority for inspections of
31 motor vehicles for the purposes specified in those sections.

32 **Comment.** Section 41404 continues former Health and Safety Code Section 43012(a)-(b)
33 & (i) without substantive change.

34 **§ 41405. Vehicles not owned by the dealer**

35 41405. With respect to vehicles not owned by the dealer, the state board or the
36 department may not prosecute, without the owner's knowledge or consent, any violation
37 by the owner of any law pertaining to vehicular emissions unless prior notice of the
38 inspection has been given to the owner.

39 **Comment.** Section 41405 continues former Health and Safety Code Section 43012(c)
40 without substantive change.

41 **§ 41406. Notice to correct**

42 41406. (a) If the executive officer or authorized representative, or a representative of the
43 department, upon inspection, finds that a used motor vehicle fails to comply with applicable
44 emissions standards or equipment, the state board or the department shall issue a notice to
45 correct and enter the appropriate vehicle information into the centralized computer data base
46 created pursuant to Sections 43500. Until all violations in the notice have been corrected

1 and the dealer has sent proof of correction by certified mail to the state board or the
2 department, whichever issued the notice, the motor vehicle shall prominently display the
3 following disclosure affixed to the windshield in at least 18-point type:

4 NOT FOR SALE

5 THIS VEHICLE IS PRESENTLY NOT IN COMPLIANCE WITH THE
6 CALIFORNIA VEHICLE POLLUTION CONTROL LAWS AND MAY NOT BE
7 SOLD UNTIL A VALID CERTIFICATE OF COMPLIANCE HAS BEEN
8 ISSUED.

9 (b) Any dealer who sells a vehicle prohibited to be sold under this subdivision is subject
10 to a civil penalty of not to exceed one thousand dollars (\$1,000). For purposes of this
11 subdivision, “proof of correction” shall consist of a copy of a certificate of compliance or
12 noncompliance issued following the issuance of a notice to correct by a licensed test station
13 or licensed repair station not affiliated with or owned by the dealer or any other proof of
14 repair satisfactory to the inspecting officer. The dealer shall send the copy of the certificate
15 of compliance or noncompliance by certified mail to the state board or the department,
16 whichever issued the notice, within three days of obtaining the certificate.

17 **Comment.** Section 41406 continues former Health and Safety Code Section 43012(d)
18 without substantive change. The second paragraph has been designated as subdivision (b).

19 **§ 41407. Civil penalty for violation by dealer**

20 41407. (a) Civil penalties may be assessed or recovered for one or more violations by a
21 dealer involving the tampering with or disabling of a vehicle’s air injection, exhaust gas
22 recirculation, crankcase ventilation, fuel injection or carburetion systems, ignition timing or
23 evaporative controls, fuel filler neck restrictor, oxygen sensor or electronic controls, or
24 missing catalytic converter.

25 (b) No civil penalty or criminal penalty may be assessed for a violation by a dealer
26 identified in a notice to correct as a result of an inspection under Sections 41404 to 41409,
27 inclusive, if the violation is related to lack of maintenance or customer tampering or
28 vandalism, including, but not limited to, a missing gasoline filler cap and a disconnected or
29 missing heated air intake tube or vacuum hose. However, if notices to correct are issued
30 under this subdivision to more than 20 percent of the vehicles offered for sale on a dealer’s
31 premises during each of three consecutive inspections conducted 30 or more days apart
32 during any one-year period, civil penalties may be assessed and recovered for each vehicle
33 issued a notice to correct.

34 **Comment.** Section 41407 continues former Health and Safety Code Section 43012(e)-(f)
35 without substantive change.

36 **§ 41408. Referral for investigation**

37 41408. If the executive officer or authorized representative, upon inspection, finds that a
38 certificate of compliance or noncompliance was issued to a motor vehicle that fails to
39 comply with applicable emissions standards or equipment, the state board shall immediately
40 refer these findings to the department for investigation under Title 5 (commencing with
41 Section 42300). The state board may refer any other suspected violation to the department
42 for appropriate action.

43 **Comment.** Section 41408 continues former Health and Safety Code Section 43012(g)
44 without substantive change.

1 **§ 41409. Liability of state for injury or damage caused by inspection**

2 41409. Notwithstanding Section 17150 of the Vehicle Code, the state shall be liable for
3 any injury or damage caused by the negligent or wrongful act or omission of the operator
4 of any vehicle which is operated pursuant to Sections 41404 to 41409, inclusive.

5 **Comment.** Section 41409 continues former Health and Safety Code Section 43012(h)
6 without substantive change.

7 CHAPTER 3. NEW MOTOR VEHICLES

8 Article 1. Standards and Certification

9 **§ 41500. Emission standards**

10 41500. (a) The state board shall adopt and implement emission standards for new motor
11 vehicles for the control of emissions therefrom, which standards the state board has found
12 to be necessary and technologically feasible to carry out the purposes of this division. Prior
13 to adopting the standards, the state board shall consider the impact of the standards on the
14 economy of the state, including, but not limited to, their effect on motor vehicle fuel
15 efficiency. The state board shall submit a report of its findings on which the standards are
16 based to the Legislature within 30 days of adoption of the standards.

17 (b) The standards may be applicable to motor vehicle engines, rather than to motor
18 vehicles.

19 **Comment.** Section 41500 continues former Health and Safety Code Section 43101 without
20 substantive change. The former unnumbered paragraphs have been designated as
21 subdivisions.

22 **§ 41501. Limitations on standards**

23 41501. The emission standards adopted by the state board pursuant to Section 41500 for
24 the 1983 and later model year motor vehicles shall be limited by the following:

25 (a) For all gasoline-powered passenger vehicles prior to the 1986 model year, the state
26 board shall not adopt primary standards for the emission of oxides of nitrogen which are
27 more stringent than 0.7 grams per vehicle mile, unless the state board by regulation also
28 provides for optional standards which are not more stringent, with respect to each
29 constituent, than 0.39 grams per vehicle mile for nonmethane hydrocarbon, 7.0 grams per
30 vehicle mile for carbon monoxide, and 0.7 grams per vehicle mile for oxides of nitrogen.
31 For gasoline-powered light-duty vehicles and medium-duty vehicles prior to the 1986
32 model year of less than 4,000 pounds unladen weight, the state board shall not adopt
33 primary standards for the emission of oxides of nitrogen which are more stringent than 1.0
34 gram per vehicle mile, unless the state board by regulation also provides for optional
35 standards which are not more stringent, with respect to each constituent, than 0.39 grams
36 per vehicle mile for nonmethane hydrocarbon, 9.0 grams per vehicle mile for carbon
37 monoxide, and 1.0 gram per vehicle mile for oxides of nitrogen. Any option may not
38 impose certification, warranty, or enforcement requirements of greater duration or
39 stringency than those set forth in the regulations applicable to 1983 and later model years,
40 as adopted or amended by the state board on May 20, 1981.

41 (b) If the state board intends by regulation to eliminate for 1986 and later model year
42 vehicles the optional standards specified in subdivision (a), the state board shall submit to
43 the Legislature, not later than January 15th of the year which is at least two calendar years
44 prior to the year in which production would commence of vehicles subject to the new

1 standard, a report with an estimate of the air quality benefits of the more stringent standard,
2 the technological and economic feasibility of requiring the standard, and the potential
3 effects on fuel economy associated with the standard. The state board shall consult with the
4 Environmental Protection Agency and motor vehicle and engine manufacturers prior to
5 submitting the air quality and fuel economy estimates.

6 **Comment.** Section 41501 continues former Health and Safety Code Section 43101.5
7 without substantive change.

8 **§ 41502. Standards for new motorcycles**

9 41502. (a) The state board may, by regulation, adopt emission standards for new
10 motorcycles registered or identified by the Department of Motor Vehicles which are sold in
11 the state.

12 (b) Motorcycles shall be exempt from the provisions of Section 41700.

13 **Comment.** Section 41502 continues former Health and Safety Code Section 43107 without
14 substantive change. The references in subdivision (a) to the first model year subject to
15 emission standards (1977 model year), and the date of sale after which these standards apply
16 (July 1, 1976) are obsolete and are not continued.

17 **§ 41503. Certification of vehicles and engines**

18 41503. The state board may certify new motor vehicles and new motor vehicle engines
19 pursuant to this article.

20 **Comment.** Section 41503 continues former Health and Safety Code Section 43100 without
21 change.

22 **§ 41504. Certification of vehicles or engines**

23 41504. (a) No new motor vehicle or new motor vehicle engine shall be certified by the
24 state board, unless the vehicle or engine, as the case may be, meets the emission standards
25 adopted by the state board pursuant to Section 41500 under test procedures adopted by the
26 state board pursuant to Section 41507.

27 (b) Notwithstanding subdivision (a), to assure that California consumers have an
28 adequate selection of light-duty motor vehicle models, the state board shall adopt
29 certification and enforcement regulations for future model years as soon as practicable, but
30 not later than for the 1983 and subsequent model years, which will allow a manufacturer to
31 certify in California federally certified light-duty motor vehicles with any engine family or
32 families when their emissions are offset by the manufacturer's California certified motor
33 vehicles whose emissions are below the applicable California standards. This exemption
34 shall not apply to emergency vehicles, as defined in Section 2002 of Title 15 of the United
35 States Code.

36 (c) Subdivision (b) shall not be applicable to any vehicle or engine model which is
37 certified to meet the emission standards established pursuant to Section 41500 or 41501.

38 **Comment.** Section 41504 continues former Health and Safety Code Section 43102 without
39 substantive change.

40 **§ 41505. Certification of new direct import vehicles**

41 41505. (a) The state board shall adopt, by regulation, a certification program for new
42 direct import vehicles, as defined by Sections 30215 and 30345, which are less than two
43 years old. The state board shall issue a certificate of conformance to each new direct import
44 vehicle which meets the requirements of the certification program. Any bonding

1 requirements for the certification program may not exceed one thousand dollars (\$1,000)
2 per new direct import vehicle or engine.

3 (b) The model year designation for new direct import vehicles in an engine family shall
4 be determined on the same basis as vehicles in the same engine family which are offered for
5 sale in California by the manufacturer. The model year designation for any new direct
6 import motor vehicle in an engine family which the manufacturer does not offer for sale in
7 California shall be determined in accordance with the regulations adopted by the state
8 board. The designations shall apply for all purposes of the certification program and for
9 registration of new direct import vehicles.

10 (c) The state board shall, by regulation, impose fees to recover the state board's costs,
11 including enforcement costs, of administration of the certification program. Failure to pay
12 the fees within 60 days of receipt after notification by the state board shall result in the
13 assessment of a 10 percent penalty. An additional interest assessment on the fees equivalent
14 to the rate earned by the Pooled Money Investment Fund shall accrue at the end of each 30-
15 day period that the fees remain unpaid. Nonpayment of the fees for more than one year
16 shall result in the state board withholding future certification of new vehicles for sale in
17 California.

18 (d) Fees collected in accordance with this section shall be deposited in the Air Pollution
19 Control Fund.

20 **Comment.** Section 41505 continues former Health and Safety Code Section 43203.5
21 without substantive change. The former unnumbered paragraphs have been designated as
22 subdivisions.

23 **§ 41506. Certification of schoolbuses**

24 41506. (a) In lieu of certification pursuant to Section 41504, the state board may certify a
25 new motor vehicle designed for exclusive use as a schoolbus, or a new motor vehicle
26 engine intended for use in a schoolbus, if the Administrator of the Environmental
27 Protection Agency has granted a certificate of conformity for the schoolbus or engine
28 pursuant to the Clean Air Act (42 U.S.C. Section 7401 *et seq.*).

29 (b) The state board shall grant a certification pursuant to subdivision (a) only if the
30 manufacturer of the schoolbus or engine demonstrates that an engine suitable for use in the
31 manufacturer's standard type of schoolbus which meets the applicable emissions standards
32 established by the state board pursuant to Section 41504 is not available for installation.

33 (c) The state board, prior to granting a certification pursuant to subdivision (a), shall
34 require a showing by the manufacturer of the schoolbus or engine of a good faith effort to
35 procure or manufacture an engine which meets the standards established by the state board
36 pursuant to Section 41504 and, in the case of the schoolbus manufacturer, a good faith
37 effort to accomplish a schoolbus redesign to accommodate such an engine. In the absence
38 of these showings, the state board shall not grant a certification pursuant to subdivision (a).

39 **Comment.** Section 41506 continues former Health and Safety Code Section 43108 without
40 substantive change. The former reference to Section 1857 *et seq.* of Title 42 of the U.S. Code
41 is obsolete and has been replaced with a reference to Section 7401 *et seq.* of Title 42 of the
42 U.S. Code.

43 **§ 41507. Test procedures for certification**

44 41507. For the certification of new motor vehicles or new motor vehicle engines, the
45 state board shall adopt, by regulation, test procedures to determine whether the vehicles or
46 engines are in compliance with the emission standards established pursuant to Section

1 41500. The state board shall base its test procedures on federal test procedures or on
2 driving patterns typical in the urban areas of California.

3 **Comment.** Section 41507 continues former Health and Safety Code Section 43104 without
4 substantive change.

5 **§ 41508. Nonconforming heavy-duty vehicles**

6 41508. (a) Except as provided in subdivision (b), the state board may adopt a schedule of
7 nonconformance fees applicable to manufacturers of heavy-duty vehicles and heavy-duty
8 vehicle engines which are unable to comply with emissions standards adopted pursuant to
9 Section 41500 for those vehicles and engines. Upon adoption and implementation of the
10 schedule by the state board, a manufacturer of a heavy-duty vehicle or heavy-duty vehicle
11 engine to which a standard adopted pursuant to Section 41500 applies may,
12 notwithstanding subdivision (a) of Section 41504, elect to pay to the state board the fee
13 applicable to any vehicle or engine failing to meet the standard.

14 (b) The state board shall establish nonconformance fees only for those heavy-duty
15 vehicles or engines for which it has adopted emission standards and test procedures which
16 are identical to the corresponding federal emission standards and test procedures.

17 (c) Any regulations adopted by the state board under this section shall be identical to the
18 nonconformance requirements, procedures, and fees established by the federal
19 Environmental Protection Agency, pursuant to Section 206(g) of the federal Clean Air Act
20 (42 U.S.C. Section 7525(g)) and Subparts A, K, and L of Part 86 of Title 40 of the Code
21 of Federal Regulations, for the same heavy-duty vehicles or engines. Under the federal
22 nonconformance fee program, the schedule of fees may be different in amount for each air
23 pollutant tested, may be different for vehicles or engines of different classes or categories,
24 and shall do all of the following:

25 (1) Take into account the extent to which actual emissions exceed the applicable standard.

26 (2) Provide for annual increases to achieve compliance with the applicable standard as
27 quickly as is technologically feasible.

28 (3) Ensure that the manufacturers which are in compliance with the applicable standard
29 suffer no competitive disadvantage from that compliance.

30 (d) Any warranty required under Section 41509 or 41600, and any action required by the
31 state board under Section 41758, are applicable only to the emissions levels for which
32 certification is granted under this section.

33 (e) All fees collected under this section shall be deposited in the Air Pollution Control
34 Fund.

35 (f) This section shall remain in effect only until January 1, 1999, and as of that date is
36 repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or
37 extends that date.

38 **Comment.** Section 41508 continues former Health and Safety Code Section 43103 without
39 change. Uncodified statutory provisions applicable to former Health and Safety Code Section
40 43103 now apply to this section. See 1986 Cal. Stat. ch. 511, § 1 (legislative findings and
41 declarations).

42 **§ 41509. Conformity to tested vehicles and engines**

43 41509. Each new motor vehicle or engine required pursuant to this part to meet the
44 emission standards established pursuant to Section 41500 shall be, in all material respects,
45 substantially the same in construction as the test motor vehicle or engine, as the case may
46 be, which has been certified by the state board in accordance with this article. However,
47 changes with respect to new motor vehicles or engines previously certified may be made if

the changes do not increase emissions above the standards under which those motor vehicles or engines, as the case may be, were certified and are made in accordance with procedures specified by the state board.

Comment. Section 41509 continues former Health and Safety Code Section 43106 without substantive change.

Article 2. Prohibited Transactions

§ 41550. Legislative findings and declaration

41550. The Legislature finds and declares that the people of this state, in order to achieve the purposes of this part, have a special interest in assuring that only those new motor vehicles and new motor vehicle engines which meet this state's stringent emission standards and test procedures, and which have been certified pursuant to this chapter, are used or registered in this state. The Legislature also finds and declares that this special interest must be protected in a manner which will not unduly or unreasonably infringe upon the right of the people of this state and other states to travel and do business interstate.

Comment. Section 41550 continues former Health and Safety Code Section 43150 without change.

§ 41551. Resident or person operating business in state

41551. (a) No person who is a resident of, or who operates an established place of business within, this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless the motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in these actions.

(b) This article shall not apply to a vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to the resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that the replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen. This article shall not apply to a vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction, or to any vehicle sold after the effective date of Chapter 1181 of the Statutes of 1980 if the vehicle was registered in this state before that effective date.

(c) This chapter shall not apply to any motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. Section 7401 *et seq.*) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state, provides satisfactory evidence to the Department of Motor Vehicles of the previous residence and registration. This subdivision shall become operative 180 calendar days after the state board adopts regulations for the certification of new direct import vehicles pursuant to Section 41505.

(d) "Established place of business," as used in this section, means a place actually occupied either continuously or at regular periods.

Comment. Section 41551 continues former Health and Safety Code Section 43151 without substantive change.

1 **§ 41552. Acquisition by person in new motor vehicle business**

2 41552. No person who is engaged in this state in the business of selling to an ultimate
3 purchaser, or renting or leasing new motor vehicles or new motor vehicle engines,
4 including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or
5 negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle,
6 new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended
7 for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of
8 or doing business in this state, or for registration, leasing or rental in this state, which has
9 not been certified pursuant to this chapter. No person shall attempt or assist in these acts.

10 **Comment.** Section 41552 continues former Health and Safety Code Section 43152 without
11 substantive change.

12 **§ 41553. Transfer by person in new motor vehicle business**

13 41553. No person who is engaged in this state in the business of selling to an ultimate
14 purchaser or renting or leasing new motor vehicles or new motor vehicle engines,
15 including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or
16 negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing
17 business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new
18 motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine,
19 which is intended primarily for use or for registration in this state, and which has not been
20 certified pursuant to this chapter. No person shall attempt or assist in these actions.

21 **Comment.** Section 41553 continues former Health and Safety Code Section 43153 without
22 change.

23 **§ 41554. Presumptions**

24 41554. (a) For purposes of this article, it is conclusively presumed that the equitable or
25 legal title to any motor vehicle with an odometer reading of 7,500 miles or more, has been
26 transferred to an ultimate purchaser, except as provided in subdivision (b), and that the
27 equitable or legal title to any motor vehicle with an odometer reading of less than 7,500
28 miles, has not been transferred to an ultimate purchaser.

29 (b) For purposes of this article, it is conclusively presumed that the equitable and legal
30 title to any direct import vehicle which is less than two years old has not been transferred to
31 an ultimate purchaser and that the equitable or legal title to any direct import motor vehicle
32 which is at least two years old has been transferred to an ultimate purchaser.

33 (c) For the purposes of subdivision (b), the age of a motor vehicle shall be determined by
34 the following, in descending order of preference:

35 (1) From the first calendar day of the model year as indicated in the vehicle identification
36 number.

37 (2) From the last calendar day of the month the vehicle was delivered by the manufacturer
38 as shown on the foreign title document.

39 (3) From January 1 of the same calendar year as the model year shown on the foreign
40 title document.

41 (4) From the last calendar day of the month the foreign title document was issued.

42 **Comment.** Section 41554 continues former Health and Safety Code Section 43156 without
43 substantive change. The second paragraph of former subdivision (b) has been designated as
44 subdivision (c).

Article 3. Manufacturer's Warranty

§ 41600. Requirements before 1990 model year

41600. (a) The manufacturer of each motor vehicle or motor vehicle engine manufactured prior to the 1990 model year shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine is:

(1) Designed, built, and equipped so as to conform, at the time of sale, with the applicable emission standards specified in this part.

(2) Free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life, determined pursuant to subdivision (b).

(b) As used in subdivision (a), "useful life" of a motor vehicle or motor vehicle engine means:

(1) In the case of light-duty motor vehicles, and motor vehicle engines used in light-duty motor vehicles, a period of use of five years or 50,000 miles, whichever first occurs, except that, in the case of fuel metering and ignition systems and their component parts which are contained in the state board's "Emissions Warranty Parts List" dated December 14, 1978 (items I(A), I(C), III(A), III(C), III(E), IX(A), and IX(B)), and which are contained in vehicles or vehicle engines certified to the optional standards pursuant to Section 41501 and subject to subdivision (a) of Section 41401, "useful life" means a period of use of two years or 24,000 miles, whichever occurs first.

(2) In the case of any other motor vehicle or motor vehicle engine, a period of use of five years or 50,000 miles, whichever first occurs, unless the state board determines that a period of use of greater duration or mileage is appropriate.

Comment. Section 41600 continues former Health and Safety Code Section 43204 without substantive change.

§ 41601. Light- and medium-duty vehicles and engines.

41601. (a) Commencing with the 1990 model year, the manufacturer of each light-duty and medium-duty motor vehicle and motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine meets all of the following requirements:

(1) Is designed, built, and equipped so as to conform with the applicable emissions standards specified in this part.

(2) Is free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable requirements specified in this part for three years or 50,000 miles, whichever first occurs.

(3) Will, for a period of three years or 50,000 miles, whichever first occurs, pass a test established under Sections 41404 to 41409, but that the warranty shall not apply if the manufacturer demonstrates that the failure of the motor vehicle or motor vehicle engine to pass the test was directly caused by the abuse, neglect, or improper maintenance or repair of the vehicle or engine.

(4) Is free from defects in materials and workmanship in emission related parts which, at the time of certification by the state board, are estimated by the manufacturer to cost individually more than three hundred dollars (\$300) to replace, for a period of seven years or 70,000 miles, whichever first occurs.

(b) The state board shall, by regulation, periodically revise the three hundred dollar (\$300) replacement cost level specified in paragraph (4) of subdivision (a) in accordance

1 with the consumer price index, as published by the United States Bureau of Labor
2 Statistics.

3 (c) For purposes of this section and Sections 41600 and 41602, a motorcycle is not a
4 light-duty vehicle.

5 **Comment.** Section 41601 continues former Health and Safety Code Section 43205 without
6 substantive change.

7 **§ 41602. Vehicles other than light- and medium-duty vehicles**

8 41602. Commencing with the 1990 model year, the manufacturer of each motor vehicle
9 and motor vehicle engine, other than a light-duty or medium-duty motor vehicle or motor
10 vehicle engine, shall warrant to the ultimate purchaser and each subsequent purchaser that
11 the motor vehicle or motor vehicle engine meets all of the following requirements:

12 (a) Is designed, built, and equipped so as to conform with the applicable emission
13 standards specified in this part for a period of use determined by the state board.

14 (b) Is free from defects in materials and workmanship which cause the motor vehicle or
15 motor vehicle engine to fail to conform with applicable requirements specified in this part
16 for the same or lesser period of use established under subdivision (a).

17 **Comment.** Section 41602 continues former Health and Safety Code Section 43205.5
18 without substantive change.

19 Article 4. Testing

20 **§ 41650. Surveillance testing of emissions at assembly facilities**

21 41650. (a) No new motor vehicle required to meet the emission standards adopted by the
22 state board pursuant to Section 41500 shall be sold and registered in this state unless the
23 manufacturer thereof permits the state board to conduct surveillance testing of emissions of
24 new motor vehicles at the manufacturer's assembly facilities, or at any other location where
25 the manufacturer's assembly line testing is performed and assembly line testing records are
26 kept.

27 (b) Authorization for the sale and registration of any new motor vehicle in this state may
28 be rescinded or withheld if, at any time, the state board is prevented by the manufacturer
29 from conducting surveillance of assembly line testing.

30 **Comment.** Section 41650 continues former Health and Safety Code Section 43202 without
31 substantive change. The former unnumbered paragraphs have been designated as
32 subdivisions.

33 **§ 41651. Surveillance testing fees**

34 41651. (a) In connection with surveillance of emissions from new motor vehicles prior to
35 their retail sale, the state board may, by regulation, impose fees on manufacturers of these
36 vehicles to recover the state board's costs in conducting this surveillance.

37 (b) A manufacturer who fails to pay a fee imposed pursuant to this section within 60 days
38 after receiving an invoice shall pay the state board an additional fee equal to 10 percent of
39 the fee specified in subdivision (a). If the manufacturer notifies the state board, within 60
40 days after receiving the invoice, that additional information is needed to honor the invoice,
41 the state board shall grant an additional 90 days for payment without the imposition of an
42 additional fee. An additional interest fee equal to the rate of interest earned by the Pooled
43 Money Investment Fund shall be imposed upon the fee specified in subdivision (a) and the

1 additional fees specified in this subdivision and subdivision (c) for each 30-day period for
2 which they remain unpaid, commencing 60 days after the receipt of the original invoice.

3 (c) A manufacturer who fails to pay all the fees imposed pursuant to this section within
4 one year from the date of receipt of the original invoice shall pay a penalty fee equal to 100
5 percent of the fees imposed pursuant to subdivisions (a) and (b). A manufacturer who fails
6 to pay all the fees and penalties imposed pursuant to this section within two years from the
7 date of receipt of the original invoice shall pay a penalty equal to 100 percent of the fees and
8 penalties imposed pursuant to subdivisions (a) and (b) and to this subdivision, for each
9 one-year period for which they remain unpaid.

10 (d) Fees authorized by this section shall be imposed only for surveillance of emissions
11 from new motor vehicles actually conducted.

12 (e) Notwithstanding Section 13340 of the Government Code, all fees collected pursuant
13 to subdivision (a) are continuously appropriated to the state board, to be credited as a
14 reimbursement of the board's costs incurred in its program for the surveillance of
15 emissions from new vehicles. All fees collected pursuant to subdivisions (b) and (c) shall
16 be deposited by the state board into the Air Pollution Control Fund.

17 **Comment.** Section 41651 continues former Health and Safety Code Section 43203 without
18 change.

19 **§ 41652. Testing on factory assembly lines**

20 41652. (a) The state board shall provide, by regulation, for the testing of motor vehicles
21 on factory assembly lines or in a manner which the state board determines best suited to
22 carry out the purpose of this part and this section.

23 (b) If a motor vehicle does not meet the prescribed assembly line standards, the motor
24 vehicle may be retested according to the official test procedures upon which original
25 certification for that make and model vehicle was based. Any motor vehicle meeting the
26 applicable emission standards by either of the testing procedures shall be deemed to meet
27 the emission standards of the State of California and shall be eligible for sale in this state.


28 (c) The regulations adopted by the state board pursuant to subdivision (a) shall provide
29 for reduced, statistically valid testing of motor vehicles contained in large engine families
30 and for which initial test results indicate compliance with the applicable standards.

31 **Comment.** Section 41652 continues former Health and Safety Code Section 43210 without
32 change.

33 **§ 41653. Exemption for light duty vehicles**

34 41653. Factory assembly line test procedures shall not apply to light-duty motor
35 vehicles, if (a) the manufacturer thereof advises the state board in writing that the
36 manufacturer does not intend to sell more than 1,000 motor vehicles in California in a given
37 model year, and (b) the manufacturer does not sell more than 1,000 motor vehicles of its
38 make in that year. Nothing in this section shall be construed to prohibit the state board from
39 requiring testing by the applicable certifying test procedure of up to 2 percent of the motor
40 vehicles of the manufacturer sold in California. This section shall not apply to 1976 and
41 later model year motor vehicles.

42 **Comment.** Section 41653 continues former Health and Safety Code Section 43208 without
43 substantive change.

44  **Staff Note.** The exemption provided by this section appears to be obsolete. It governs
45 the testing of new vehicles and provides that it does not apply to 1976 and later model years.
46 The staff would like to receive input on whether this section has any continued usefulness.

Article 5. Manufacturer Reporting

§ 41700. Decal disclosing exhaust emission information

41700. (a) The state board may adopt a regulation to prohibit the sale and registration in this state of any new motor vehicle certified by the state board to which there has not been securely affixed on a side window to the rear of the driver or, if it cannot be so placed, to the windshield of the motor vehicle in accordance with paragraph (3) of subdivision (b) of Section 26708 of the Vehicle Code, by the manufacturer a decal on which the manufacturer shall endorse clearly, distinctly, and legibly true and correct entries disclosing the following information concerning the motor vehicle:


(1) The emission standards adopted by the state board pursuant to Section 41500 which are applicable to that motor vehicle.

(2) The exhaust emissions, based on quality audit tests of assembly line motor vehicles or, if required by the state board, as determined by the factory assembly line test for that motor vehicle, and, at the beginning of each model year, based on certification fleet data.

(b) The regulation may be adopted only if the state board finds that the regulation is (1) necessary to enforce or assure compliance with applicable statutes, standards, or procedures relating to vehicle emissions or (2) necessary for the protection and information of consumers.

(c) Nothing in this division or in any other statute shall be construed as prohibiting a purchaser from removing the decal required by this section, after the purchaser has taken possession of the vehicle.

Comment. Section 41700 continues former Health and Safety Code Section 43200 without substantive change. The former reference in subdivision (a)(2) to the first model year to which the requirements of that provision applied (1976 model year) is obsolete and has not been continued. Former paragraphs and subdivisions have been redesignated.

 **Staff Note.** Health and Safety Code Section 43200.5 never became operative and has not been continued. The section is subject to an operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 309 (1998).

§ 41701. Manufacturer progress report

41701. (a) Every person who manufactures new motor vehicles for sale in California shall file with the state board an annual report as to the person's efforts and progress in meeting state standards adopted pursuant to Section 41500 and federal standards and research objectives specified in Section 7521 of Title 42 of the United States Code.

(b) The reports shall be available to the public. However, the manufacturer may designate that a portion of the report is a trade secret and the portion shall not be released except to the state board employees specifically designated by the executive officer, unless the state board, after an investigation, determines that the portion is not in fact a trade secret. State board employees having access to the trade secret shall maintain its confidentiality.

(c) The state board shall conduct investigations with respect to the reports as it deems necessary.

(d) No report is required from the manufacturer once all models of motor vehicles of the manufacturer which are sold in California and which are subject to the state standards adopted pursuant to Section 41500, and the federal standards and research objectives specified in Section 7521 of Title 42 of the United States Code, meet all those standards and objectives.

Comment. Section 41701 continues former Health and Safety Code Section 43206 without substantive change. The reference in subdivision (a) to the date on which the annual reporting requirement began (January 1, 1982) is obsolete and has not been continued. The former unnumbered paragraphs have been designated as subdivisions.

§ 41702. Emissions-related defects in engine family

41702. The state board shall, by regulation, require manufacturers of motor vehicles and motor vehicle engines to determine the extent to which emissions-related defects exist in each engine family and to recommend the diagnostic and repair procedures that can result in the identification and correction of these defects under vehicle inspection and maintenance programs.

Comment. Section 41702 continues former Health and Safety Code Section 43210.5 without change.

Article 6. Enforcement

§ 41750. Penalty for prohibited transactions

41750. (a) Any person who violates any provision of Article 2 (commencing with Section 41550) shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle.

(b) Any action to recover a penalty under this section shall be brought in the name of the people of the State of California in the superior court of the county where the violation occurred, or in the county where the defendant's residence or principal place of business is located, by the Attorney General on behalf of the state board, in which event all penalties adjudged by the court shall be deposited in the Air Pollution Control Fund, or by the district attorney or county attorney of the county, or by the city attorney of a city in that county, in which event all penalties adjudged by the court shall be deposited with the treasurer of the county or city, as the case may be.

Comment. Section 41750 continues former Health and Safety Code Section 43154 without substantive change.

§ 41751. Precedence of action under Section 41750

41751. An action brought pursuant to Section 41750 to recover civil penalties shall take special precedence over all other civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

Comment. Section 41751 continues former Health and Safety Code Section 43155 without substantive change.

§ 41752. Penalty for sale of vehicle without decal

41752. (a) Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 41700 shall be subject to a civil penalty of not to exceed one thousand dollars (\$1,000).

(b) Any penalty recovered pursuant to this section shall be deposited into the General Fund.

Comment. Section 41752 continues former Health and Safety Code Section 43201 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

1 ☞ **Staff Note.** An amended form of Health and Safety Code Section 43646, and an
2 alternative form that would become operative when the amended form becomes inoperative
3 by its own terms never became operative and have not been continued. The sections are
4 subject to an operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32;
5 Air Resources Board, California Environmental Protection Agency, California Air Pollution
6 Control Laws 310 (1998).

7 **§ 41753. Penalty for sale of vehicle not in compliance with standards**

8 41753. (a) No new motor vehicle shall be sold in California that does not meet the
9 emission standards adopted by the state board, and any manufacturer who sells, attempts to
10 sell, or causes to be offered for sale a new motor vehicle that fails to meet the applicable
11 emission standards shall be subject to a civil penalty of five thousand dollars (\$5,000) for
12 each prohibited action.

13 (b) Any penalty recovered pursuant to this section shall be deposited into the General
14 Fund.

15 **Comment.** Section 41753 continues former Health and Safety Code Section 43211 without
16 substantive change. The former unnumbered paragraphs have been designated as
17 subdivisions.

18 **§ 41754. Penalty for failure to comply with standards or testing procedures**

19 41754. (a) Any manufacturer or distributor who does not comply with the emission
20 standards or the test procedures adopted by the state board shall be subject to a civil penalty
21 of fifty dollars (\$50) for each vehicle which does not comply with the standards or
22 procedures and which is first sold in this state. The payment of the penalties to the state
23 board shall be a condition to the further sale by the manufacturer or distributor of motor
24 vehicles in this state.

25 (b) Any penalty recovered pursuant to this section shall be deposited into the Air
26 Pollution Control Fund.

27 **Comment.** Section 41754 continues former Health and Safety Code Section 43212 without
28 substantive change. The former unnumbered paragraphs have been designated as
29 subdivisions.

30 **§ 41755. Inclusion of penalty in sales price**

31 41755. No manufacturer or distributor who pays a penalty pursuant to Section 41754
32 shall add the amount of the penalty to the cost of any motor vehicles sold by the
33 manufacturer, and any provision of any contract of sale including the penalty as part of the
34 cost of a motor vehicle shall be void and unenforceable.

35 **Comment.** Section 41755 continues former Health and Safety Code Section 43209 without
36 substantive change.

37 **§ 41756. Enforcement of penalties**

38 41756. Sections 41753 and 41754 shall be enforced by the state board, and may be
39 enforced by the Department of the California Highway Patrol, the Department of Motor
40 Vehicles, and the bureau.

41 **Comment.** Section 41756 continues former Health and Safety Code Section 43213 without
42 change.

1 **§ 41757. Revocation of certification**

2 41757. (a) The state board may revoke outstanding certification of new motor vehicles
3 for sale in California if the manufacturer thereof willfully fails to file any semiannual report
4 required by Section 41701 or files a report which is deemed by the state board to
5 inadequately describe the manufacturer's efforts and progress.

6 (b) The state board may also withhold future certification of the manufacturer's vehicles
7 until the manufacturer offers for sale in California vehicles which meet the standards
8 promulgated pursuant to Section 7521 of Title 42 of the United States Code.

9 **Comment.** Section 41757 continues former Health and Safety Code Section 43207 without
10 substantive change. The former unnumbered paragraphs have been designated as
11 subdivisions. The former reference to Section 1857f-1(b)(1) of Title 42 of the U.S. Code is
12 obsolete and has been replaced with a reference to Sections 7521 of Title 42 of the U.S.
13 Code.

14 **§ 41758. Manufacturer's violation and failure to correct**

15 41758. (a) No new motor vehicle, new motor vehicle engine, or motor vehicle with a
16 new motor vehicle engine required pursuant to this part to meet the emission standards
17 established pursuant to Section 41500 shall be sold to the ultimate purchaser, offered or
18 delivered for sale to the ultimate purchaser, or registered in this state if the manufacturer has
19 violated emission standards or test procedures and has failed to take corrective action,
20 which may include recall of vehicles or engines, specified by the state board in accordance
21 with regulations of the state board. If a manufacturer contests the necessity for, or the
22 scope of, a recall of vehicles or engines ordered pursuant to this section and so advises the
23 state board, the state board shall not require the recall unless it first affords the
24 manufacturer the opportunity, at a public hearing, to present evidence in support of the
25 manufacturer's objections. If a vehicle or engine is recalled pursuant to this section, the
26 manufacturer shall make all necessary corrections specified by the state board without
27 charge to the registered owner of the vehicle or engine or, at the manufacturer's election,
28 reimburse the registered owner for the cost of making necessary corrections.

29 (b) The procedures for determining, and the facts constituting, compliance or failure of
30 compliance shall be established by the state board.

31 **Comment.** Section 41758 continues former Health and Safety Code Section 43105 without
32 substantive change. The former unnumbered paragraphs have been designated as
33 subdivisions.

34 **CHAPTER 4. USED MOTOR VEHICLES**

35 **Article 1. Certification of Devices**

36 **§ 41800. Emission standards**

37 41800. The state board shall adopt and implement emission standards for used motor
38 vehicles for the control of emissions therefrom, which standards the state board has found
39 to be necessary and technologically feasible to carry out the purposes of this division;
40 however, the installation of certified devices on used motor vehicles shall not be mandated
41 except by statute. The standards may be applicable to motor vehicle engines, rather than to
42 motor vehicles.

43 **Comment.** Section 41800 continues former Health and Safety Code Section 43600 without
44 substantive change.

1 **§ 41801. Certification requirement**

2 41801. (a) No person shall install, sell, offer for sale, or advertise, or, except in an
3 application to the state board for certification of a device, represent, any device as a motor
4 vehicle pollution control device for use on any used motor vehicle unless that device has
5 been certified by the state board. No person shall sell, offer for sale, advertise, or represent
6 any motor vehicle pollution control device as a certified device which, in fact, is not a
7 certified device. Any violation of this subdivision is a misdemeanor.

8 (b) Subdivision (a) shall not preclude any person from installing, selling, offering for
9 sale, or advertising a device as a motor vehicle pollution control device for use on a
10 particular classification of used motor vehicles if the state board has found that the
11 installation of the device on that particular classification of used motor vehicle results in the
12 vehicles meeting the state exhaust emissions standards.

13 **Comment.** Section 41801 continues former Health and Safety Code Section 43644 without
14 substantive change.

15 **§ 41802. Certification for 1955 through 1965 model years**

16 41802. The state board shall certify exhaust devices for 1955 through 1965 model year
17 motor vehicles.

18 **Comment.** Section 41802 continues former Health and Safety Code Section 43601 without
19 change.

20 **§ 41803. Certification standards for 1955 through 1965 model years**

21 41803. (a) An exhaust device certified by the state board pursuant to Section 41802 shall
22 not allow emissions exceeding any of the following:

- 23 (1) 350 parts per million hydrocarbons.
- 24 (2) 2 percent carbon monoxide.
- 25 (3) 800 parts per million nitrogen oxide.

26 (b) However, if no exhaust device meets all three of the maximums specified in
27 paragraphs (1), (2), and (3), the state board may certify an exhaust device which meets any
28 two of the three maximums specified, if the installation of that device in a motor vehicle
29 would not increase the other emission in excess of the emission of that pollutant by the
30 vehicle in the absence of the device.

31 (c) If two or more exhaust devices are certified that they meet the requirements of this
32 section, the state board may not require the installation of more than one exhaust device on
33 any motor vehicle.

34 **Comment.** Section 41803 continues former Health and Safety Code Section 43602 without
35 substantive change. The former unnumbered paragraphs have been designated as
36 subdivisions, and the former subdivisions have been redesignated as paragraphs.

37 **§ 41804. Adoption of certification criteria for 1955 through 1965 model years**

38 41804. The state board shall adopt, by regulation, criteria for the certification of exhaust
39 devices pursuant to Section 41802. The criteria shall include, but not be limited to,
40 requirements that:

41 (a) The device meets the cost and performance requirement specified in Section 41805.

42 (b) The device shall not allow exhaust emissions exceeding the amount specified in
43 Section 41803.

44 (c) The manufacturer of the device comply with Section 41812.

1 **Comment.** Section 41804 continues former Health and Safety Code Section 43603 without
2 substantive change.

3 **§ 41805. Cost, maintenance and performance criteria for 1955 through 1965 model years**

4 41805. An exhaust device certified pursuant to Section 41802:

5 (a) Shall not cost, including the cost of installation, more than eighty-five dollars (\$85).

6 (b) Shall not require maintenance more than once each 12,000 miles of operation, and
7 that maintenance shall not cost, including the cost of parts and labor, more than fifteen
8 dollars (\$15).

9 (c) Shall equal or exceed the performance criteria established by the state board for these
10 devices for new motor vehicles or, in the alternative, have an expected useful life of at least
11 30,000 miles of operation.

12 **Comment.** Section 41805 continues former Health and Safety Code Section 43604 without
13 substantive change.

14 **§ 41806. Standards and certification for 1966 through 1970 model years**

15 41806. (a) The state board shall set standards for, and certify, exhaust devices to
16 significantly reduce the emission of oxides of nitrogen from 1966 through 1970 model year
17 motor vehicles, as determined by the state board from a representative sampling of those
18 motor vehicles, which the state board has found to be necessary and technologically
19 feasible to carry out the purposes of this division.

20 (b) In setting standards under this section, the primary consideration shall be the greatest
21 possible reduction of oxides of nitrogen.

22 **Comment.** Section 41806 continues former Health and Safety Code Section 43610 without
23 substantive change. The former unnumbered paragraphs have been designated as
24 subdivisions.

25 **§ 41807. Criteria for certification for 1966 through 1970 model years**

26 41807. The state board shall adopt, by regulation, criteria for the certification of exhaust
27 devices pursuant to Section 41806. The criteria shall include, but not be limited to,
28 requirements that:

29 (a) The device meets the cost and performance requirements specified in Section 41808.

30 (b) The device shall not allow exhaust emissions of oxides of nitrogen exceeding the
31 standard adopted by the state board pursuant to Section 41806.

32 (c) The manufacturer of the device comply with Sections 41809 and 41812.

33 **Comment.** Section 41807 continues former Health and Safety Code Section 43611 without
34 substantive change.

35 **§ 41808. Cost, maintenance and performance criteria for 1966 through 1970 model years**

36 41808. An exhaust device certified pursuant to Section 41806:

37 (a) Shall not cost, including the cost of installation, more than thirty-five dollars (\$35).

38 (b) Shall not require maintenance more than once each 12,000 miles of operation, and
39 that maintenance shall not cost, including the cost of parts and labor, more than fifteen
40 dollars (\$15).

41 (c) Shall equal or exceed the performance criteria established by the state board for
42 devices for new motor vehicles or, in the alternative, have an expected useful life of at least
43 50,000 miles of operation.

1 **Comment.** Section 41808 continues former Health and Safety Code Section 43612 without
2 substantive change.

3 **§ 41809. Maintenance instructions for 1966 through 1970 model years**

4 41809. The manufacturer of an exhaust device certified pursuant to Section 41806 shall
5 include, with the sale of the device, instructions setting forth what steps the purchaser
6 should take to maintain the device in proper working condition.

7 **Comment.** Section 41809 continues former Health and Safety Code Section 43613 without
8 substantive change.

9 **§ 41810. Subsequent certification of devices for 1966 through 1970 model years**

10 41810. After one or more devices are initially certified pursuant to Section 41806, no
11 device shall be certified under that section which is less effective than the one or ones
12 initially certified. Any subsequent certification of a more effective device shall not affect the
13 certification of a previously certified device.

14 **Comment.** Section 41810 continues former Health and Safety Code Section 43614 without
15 change.

16 **§ 41811. Devices reducing emission of two of three pollutants**

17 41811. (a)(1) In addition to certifying devices which meet the standards set forth in, or
18 established pursuant to, Sections 41803 and 41806, the state board shall adopt standards
19 for certifying exhaust devices which achieve a reduction of the emission of hydrocarbons,
20 carbon monoxide, and oxides of nitrogen from the exhaust of a motor vehicle substantially
21 below the standards for any two pollutants set forth in, or established pursuant to, Section
22 41803 or 41806.

23 (2) If, however, an exhaust device is shown to substantially reduce the emission of any
24 two of the three pollutants, the state board may certify that device, so long as the
25 installation of the device in a motor vehicle does not increase the emission of the other
26 pollutant in excess of the emission of that pollutant by the vehicle in the absence of the
27 device.

28 (b) Devices certified pursuant to this section may be certified without regard to the
29 provisions of subdivision (a) of Section 41805 or subdivision (a) of Section 41808.

30 (c) After one or more devices are initially certified, no device shall be certified pursuant to
31 this section which is substantially less effective than any device previously certified, unless
32 the state board determines, pursuant to a cost-benefit analysis, that the less effective device
33 is also substantially less costly and therefore merits certification. Any subsequent
34 certification of a more effective device shall not affect the certification of a previously
35 certified device.

36 (d) The state board may permit the installation of a device certified pursuant to this
37 section in lieu of any certified motor vehicle pollution control device which is required to be
38 installed pursuant to any other provision of state law, if the installation of that device on
39 that particular classification of motor vehicles results in no greater emissions than if the
40 required certified device were operative over the life of the vehicle. The applicant shall be
41 responsible for proving compliance with this subdivision and with other applicable criteria.
42 Certificates of compliance shall be required upon the installation of a device certified
43 pursuant to this section and installed pursuant to this subdivision, as if it were a device
44 required by any other provision of state law.

1 **Comment.** Section 41811 continues former Health and Safety Code Section 43630 without
2 substantive change. The former unnumbered paragraphs of subdivision (a) have been
3 numbered.

4 **§ 41812. Conditions to certification**

5 41812. As a condition to the certification of any motor vehicle pollution control device
6 required under this chapter, except Section 41811, the manufacturer of the device, in order
7 to protect the public interest, shall agree to either of the following:

8 (a) That, until two or more of these devices are certified for the same subclassification of
9 motor vehicles, the manufacturer will enter into any cross-licensing or other agreements the
10 state board determines, after a public hearing, are necessary to insure adequate competition
11 among manufacturers of these devices.

12 (b) That, if the device is the only one made available to the public, the retail price of the
13 device, including installation, does not exceed the price established, after a public hearing,
14 by the state board for that device.

15 **Comment.** Section 41812 continues former Health and Safety Code Section 43635 without
16 substantive change.

17 **§ 41813. Fair and reasonable price**

18 41813. (a) In establishing the fair and reasonable retail price for a motor vehicle pollution
19 control device for purposes of subdivision (b) of Section 41812, the state board shall take
20 into consideration the cost of manufacturing the device and the manufacturer's suggested
21 retail price.

22 (b) The price established by the state board shall, in no case, exceed the amount specified
23 in subdivision (a) of Section 41805 or subdivision (a) of Section 41808, as the case may
24 be.

25 **Comment.** Section 41813 continues former Health and Safety Code Section 43636 without
26 substantive change.

27 **§ 41814. Notice to state departments of certification**

28 41814. Whenever the state board certifies a motor vehicle pollution control device for the
29 control of emissions of pollutants from a particular source of emissions from motor
30 vehicles for which standards have been set by this part or by the state board, it shall so
31 notify the Department of Motor Vehicles, the Department of the California Highway Patrol,
32 and the bureau.

33 **Comment.** Section 41814 continues former Health and Safety Code Section 43645 without
34 change.

35 **§ 41815. Revocation, suspension or restriction of certification**

36 41815. (a) The state board may revoke, suspend, or restrict a certification of a previously
37 certified device, or an exemption previously granted, upon a determination by the state
38 board that the device no longer operates within the applicable criteria and standards adopted
39 by the state board or no longer should be exempted.

40 (b) The determination may be based on any relevant information, including, but not
41 limited to, a change in the device, significant differences between certified and production
42 models, or new data which bear upon the applicable certification criteria or standards and
43 require the revocation of the device.

Comment. Section 41815 continues former Health and Safety Code Section 43640 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

§ 41816. Review of certification decision

41816. Proceedings to review the denial of an application for certification or exemption, or proceedings to revoke, suspend, or restrict a certification previously granted by the state board, shall, upon the timely request of the applicant or affected manufacturer, be conducted by the state board in accordance with the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and the state board shall have all the powers granted therein to the Office of Administrative Hearings.

Comment. Section 41816 continues former Health and Safety Code Section 43641 without change.

§ 41817. Revocation of certification

41817. Certification for a motor vehicle pollution control device may be revoked by the state board, if the actual cost of the device installed exceeds the cost permitted by law or established pursuant to subdivision (b) of Section 41812.

Comment. Section 41817 continues former Health and Safety Code Section 43642 without substantive change.

§ 41818. Device with revoked, suspended or restricted certification

41818. (a) Any motor vehicle equipped with a certified device shall not be deemed in violation of the provisions of this part, or Section 27156 of the Vehicle Code, because the certification of the device is subsequently revoked, suspended, or restricted.

(b) Replacement parts for the device may continue to be supplied and used for the vehicle, unless the revocation, suspension, or restriction is based upon a finding that the certified device has been found to be unsafe in actual use or is otherwise mechanically defective, in which event the device shall be brought into compliance with the provisions of this part within 30 days after the finding.

Comment. Section 41818 continues former Health and Safety Code Section 43643 without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

☞ **Staff Note.** Health and Safety Code Section 43646 never became operative and has not been continued. The section is subject to an operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 321 (1998).

Article 2. Required Devices

§ 41850. Model year 1955 or later

41850. Every 1955 and later model motor vehicle shall be equipped with the certified device as required by the Department of Motor Vehicles Manual of Registration Procedures as of January 1, 1975, or as amended to reflect the adoption of rules and regulations by a district board pursuant to Section 41859.

Comment. Section 41850 continues former Health and Safety Code Section 43650 without substantive change.

1 ☞ **Staff Note.** It isn't clear whether the section's reference to January 1, 1975 states a
2 starting date for the device requirement (in which case it is obsolete) or instead refers to the
3 contents of the Department of Motor Vehicles Manual of Registration Procedures on that date
4 (in which case it may be obsolete). The staff would like to receive input on whether this
5 reference serves a useful purpose.

6 **§ 41851. Model year 1955 through 1965**

7 41851. Except as provided in Section 41858, every 1955 through 1965 model year
8 motor vehicle, subject to registration in this state, upon either transfer of ownership and
9 registration, or upon initial registration of a vehicle not previously registered in this state,
10 shall be equipped with a certified device to control its exhaust emissions in accordance with
11 a schedule of installation adopted by the state board.

12 **Comment.** Section 41851 continues former Health and Safety Code Section 43652 without
13 substantive change.

14 **§ 41852. Model year 1963 or later**

15 41852. Every 1963 or later model year motor vehicle, subject to registration in this state,
16 shall be equipped with a certified device to control its crankcase emissions.

17 **Comment.** Section 41852 continues former Health and Safety Code Section 43651 without
18 change.

19 **§ 41853. Model year 1966 or later**

20 41853. Every 1966 or later model year motor vehicle, subject to registration and first
21 sold and registered in this state, shall be equipped with a certified device to control its
22 crankcase emissions and exhaust emissions.

23 **Comment.** Section 41853 continues former Health and Safety Code Section 43653 without
24 change.

25 **§ 41854. Model year 1966 through 1970 light-duty motor vehicle**

26 41854. (a) Except as otherwise provided in subdivision (b), every 1966 through 1970
27 light-duty motor vehicle, subject to registration in this state, shall be equipped with a
28 certified device to control its exhaust emission of oxides of nitrogen upon initial
29 registration, upon transfer of ownership and registration, and upon registration of a motor
30 vehicle previously registered outside this state.

31 (b) Subdivision (a) shall not apply to a 1966 through 1970 light-duty motor vehicle (1)
32 which is registered to, or subject to registration by, an elderly low-income person, (2)
33 which was purchased from a person other than a dealer or a person holding a retail seller's
34 permit, and (3) which is used principally by or for the benefit of the elderly low-income
35 person. However, only one vehicle described above shall be registered to, or subject to
36 registration by, the elderly low-income person at any one time.

37 (c) For purposes of subdivision (b), the Department of Motor Vehicles may require
38 satisfactory proof (1) of the age of the transferee of the motor vehicle, (2) of the combined
39 adjusted gross income of the household in which the transferee resides, and (3) that the
40 transferor of the motor vehicle is a person other than a dealer or a person holding a retail
41 seller's permit.

42 **Comment.** Section 41854 continues former Health and Safety Code Section 43654 without
43 change.

1 **§ 41855. Schedules of installation**

2 41855. (a) The state board shall adopt, by regulation, schedules of installation of certified
3 devices to control exhaust emissions for purposes of Section 41851, after consultation with
4 the Department of the California Highway Patrol, the Department of Motor Vehicles, and
5 the bureau.

6 (b) In establishing the schedules, the state board shall consider all relevant factors,
7 including, but not limited to, the burden of enforcement on the Department of the California
8 Highway Patrol, the Department of Motor Vehicles, and the bureau, the need for rapid
9 installation of motor vehicle pollution control devices in order to preserve and protect the
10 public health, and the existing ambient air quality in the air basins.

11 **Comment.** Section 41855 continues former Health and Safety Code Section 43655 without
12 substantive change.

13 **§ 41856. Exemptions**

14 41856. The state board may exempt from any schedule of installation adopted pursuant to
15 Section 41854 or 41855:

16 (a) Motor vehicles or classifications or subclassifications of motor vehicles for which
17 certified devices are not available.

18 (b) Motor vehicles or classifications or subclassifications of motor vehicles whose
19 emissions are found by appropriate tests to meet applicable emission standards without an
20 additional motor vehicle pollution control device.

21 (c) Implements of husbandry.

22 (d) Vehicles which qualify for special identification plates pursuant to Section 5004 of the
23 Vehicle Code.

24 **Comment.** Section 41856 continues former Health and Safety Code Section 43656 without
25 substantive change.

26 **§ 41857. Charges for inspection and certification of exemption**

27 41857. (a) The charge that can be made for the inspection and certification of exemption
28 granted by the state board pursuant to Section 41856 shall not exceed three-tenths (0.3) of
29 one hour multiplied by the hourly labor rate charged by the particular garage or service
30 station.

31 (b) The charge shall be posted as a fixed fee.

32 **Comment.** Section 41857 continues former Health and Safety Code Section 43656.5
33 without substantive change. The former unnumbered paragraphs have been designated as
34 subdivisions.

35 **§ 41858. Additional exemption**

36 41858. The state board may also exempt, from the schedule of installation adopted
37 pursuant to Section 41855, any motor vehicle registered to an owner whose residence is in
38 a county, or portion thereof, which the state board finds, after a public hearing, that the
39 installation of a certified device pursuant to Section 41851 to control exhaust emissions is
40 not necessary or desirable to preserve and protect the public health and the existing ambient
41 air quality thereof.

42 **Comment.** Section 41858 continues former Health and Safety Code Section 43657 without
43 substantive change.

1 **§ 41859. Installation of device where shown necessary**

2 41859. (a) If the evidence submitted at a public hearing indicates that, in order to
3 preserve the ambient air quality of a district, it is necessary that every 1955 through 1965
4 model year motor vehicle within the district be equipped with device or devices certified by
5 the state board to control emission of pollutants from the crankcase or exhaust, the district
6 board may adopt rules and regulations to require the installation of those devices.

7 (b) The rules and regulations shall provide for a schedule of installation by which the
8 motor vehicles are to be equipped with a certified device, taking into consideration the
9 number of motor vehicles to be equipped, the availability of the devices, and the availability
10 of licensed installers to install the devices.

11 (c) The district board shall coordinate its activities pursuant to this section with the
12 Department of the California Highway Patrol and the Department of Motor Vehicles in
13 order to insure adoption of procedures which will facilitate enforcement of the rules and
14 regulations adopted pursuant to this section.

15 **Comment.** Section 41859 continues former Health and Safety Code Section 43658 without
16 substantive change.

17 **§ 41860. Annual review of exhaust device requirement**

18 41860. (a) The state board shall annually review the requirement that an exhaust device
19 be installed on every 1955 through 1965 model year light-duty motor vehicle upon initial
20 registration, upon transfer of ownership and registration, or upon registration of a motor
21 vehicle previously registered outside this state, to determine the contribution of that
22 requirement to the maintenance of required ambient air quality standards in those air basins
23 where the requirement is applicable.

24 (b) In making its determination, the state board shall consider all relevant factors,
25 including, but not limited to, the fact that the requirement is being imposed on a constantly
26 decreasing number of motor vehicles.

27 (c) Upon a determination by the state board by regulation that the requirement is no
28 longer a significant factor to the maintenance of required ambient air quality standards in
29 any applicable air basin, except as provided in subdivision (d), 1955 through 1965 model
30 year light-duty motor vehicles in that air basin shall no longer be required to be so
31 equipped.

32 (d) All 1955 through 1965 model year light-duty motor vehicles equipped with an
33 exhaust device pursuant to the requirement prior to the adoption of the regulation by the
34 state board pursuant to subdivision (c) shall continue to be so equipped.

35 **Comment.** Section 41860 continues former Health and Safety Code Section 43659 without
36 change.

37 **§ 41861. Review of exhaust emissions device requirement for light duty vehicles**

38 41861. The state board shall review the requirement that every 1966 through 1970 light-
39 duty motor vehicle be equipped with a certified device to control its exhaust emissions of
40 oxides of nitrogen upon initial registration and upon transfer of ownership and registration,
41 to determine the contribution of that requirement to the maintenance of ambient air quality
42 standards in the state and the cost effectiveness of that requirement. The state board shall
43 report to the Legislature its findings and recommendations with regard to the requirement
44 not later than January 1, 1984.

45 **Comment.** Section 41861 continues former Health and Safety Code Section 43660 without
46 change.

1 ☞ **Staff Note.** This section specifies a 1984 deadline for submission of certain findings to
2 the Legislature. The staff would like to receive input on two questions: (1) Were the findings
3 submitted as required? (2) Does the section still serve a useful purpose?

4 Article 3. Heavy-Duty Motor Vehicles

5 **§ 41900. Legislative findings and declarations**

6 41900. The Legislature finds and declares all of the following:

7 (a) Significant reductions in diesel emissions from existing vehicles can be achieved by
8 the adoption of stricter diesel fuel specifications on sulfur, aromatics, and other fuel
9 properties.

10 (b) The state board, in consultation with the State Department of Health Services, is
11 evaluating the potential carcinogenic effects of specific constituents of diesel exhaust.
12 Diesel exhaust is known to include, as constituents, many substances known or suspected
13 to be toxic air contaminants.

14 (c) The Environmental Protection Agency has agreed to study the health effects of
15 various fuels, including diesel, to determine the relative impacts on public health and the
16 environment.

17 (d) Notwithstanding the ongoing study and review, reduction of emissions from diesel
18 powered vehicles, to the maximum extent feasible, is in the best interests of air quality and
19 public health.

20 **Comment.** Section 41900 continues former Health and Safety Code Section 43700 without
21 change.

22 **§ 41901. Regulation of heavy-duty diesel motor vehicles**

23 41901. (a) Not later than July 15, 1992, the state board, in consultation with the bureau
24 and the review committee established pursuant to Section 42600, shall, after a public
25 hearing, adopt regulations which require that owners or operators of heavy-duty diesel
26 motor vehicles perform regular inspections of their vehicles for excessive emissions of
27 smoke. The inspection procedure, the frequency of inspections, the emission standards for
28 smoke, and the actions the vehicle owner or operator is required to take to remedy
29 excessive smoke emissions shall be specified by the state board. Those standards shall be
30 developed in consultation with interested parties. The smoke standards adopted under this
31 subdivision shall not be more stringent than those adopted under Title 5 (commencing with
32 Section 42300).

33 (b) Not later than December 15, 1993, the state board shall, in consultation with the State
34 Energy Resources Conservation and Development Commission, and after a public hearing,
35 adopt regulations which require that heavy-duty diesel motor vehicles subject to
36 subdivision (a) utilize emission control equipment and alternative fuels. The state board
37 shall consider, but not be limited to, the use of cleaner burning diesel fuel, or other
38 methods which will reduce gaseous and smoke emissions to the greatest extent feasible,
39 taking into consideration the cost of compliance. The regulations shall provide that any
40 significant modification of the engine necessary to meet these requirements shall be made
41 during a regularly scheduled major maintenance or overhaul of the vehicle's engine. If the
42 state board requires the use of alternative fuels, it shall do so only to the extent those fuels
43 are available.

44 (c) The state board shall adopt emissions standards and procedures for the qualification
45 of any equipment used to meet the requirements of subdivision (b), and only qualified
46 equipment shall be used.

1 **Comment.** Section 41901 continues former Health and Safety Code Section 43701 without
2 substantive change.

3 ☞ **Staff Note.** Subdivisions (a) and (b) specify deadlines for the adoption of regulations.
4 These deadline provisions may be obsolete. The staff would like to receive input on two
5 questions: (1) Have the regulations been adopted as required? (2) Do the deadlines stated in
6 these subdivisions still serve a useful purpose?

7 **§ 41902. Creation and purpose of diesel fuel trust fund**

8 41902. (a) Any revenues received by the state board from any variance fees imposed
9 upon manufacturers who receive a variance from the standards for the content of diesel fuel
10 adopted by the state board shall be deposited in the Diesel Fuel Trust Fund, which is
11 hereby created in the State Treasury. The money in the trust fund may be expended only
12 upon appropriation by the Legislature in accordance with subdivision (b) and Section
13 41903.

14 (b) The money in the Diesel Fuel Trust Fund shall be expended to reimburse owners of
15 diesel fuel-powered engines and diesel fuel-powered equipment for damage to fuel injection
16 system elastomer components which can be established as the result of the use of the diesel
17 fuel and which is damage that is not the responsibility of the manufacturer.

18 **Comment.** Section 41902 continues former Health and Safety Code Section 43702(a)-(b)
19 without substantive change. The reference in subdivision (a) to the application date of diesel
20 fuel standards subject to a variance for which the fee is imposed (on and after October 1,
21 1993) is obsolete and has not been continued.

22 Statements of legislative intent applicable to former Health and Safety Code Section 43702
23 now apply to this section. See, e.g., 1994 Cal. Stat. ch. 781, § 1 (legislative findings and
24 intent); Senate Journal, 1993-94 Reg. Sess., p. 6869 (legislative intent).

25 **§ 41903. Reimbursement program**

26 41903. The state board shall develop and implement, by November 30, 1994, a
27 reimbursement program to include all of the following:

28 (a) An application for reimbursement claims, to be submitted to the state board, that
29 requires documentation that supports a claim of damage to diesel fuel injection system
30 elastomer components. The documentation shall consist of repair records from an
31 authorized engine repair business or fleet repair facility which verify that diesel fuel
32 injection system elastomer component damage occurred on and after September 1, 1993,
33 and that the failure occurred as the result of diesel fuel which met the standards for the
34 content of diesel fuel adopted by the state board, which applied on and after October 1,
35 1993.

36 (b) Claimants shall demonstrate evidence of ownership of a vehicle or equipment for
37 which damage is claimed by providing copies of ownership records.

38 (c) Claimants with valid claims shall be reimbursed for the cost of repairs up to a
39 maximum amount for each of the following two classes of vehicle or equipment, as
40 follows:

41 (1) Owners of light-duty vehicles, small marine engines, and stationary units, including,
42 but not limited to, utility engines, compressors, pumps, and generators, shall be
43 reimbursed for damage not exceeding four hundred fifty dollars (\$450) for each claim.

44 (2) Owners of heavy-duty on-road vehicles and off-road agricultural and construction
45 equipment shall be reimbursed for damage not exceeding five hundred fifty dollars (\$550)
46 for each claim.

47 (d) Claimants shall be limited to one claim for each vehicle or equipment unit.

(e) The state board shall develop an audit component within the reimbursement program to identify fraudulent claims.

(f) All applications for claims shall be postmarked not later than midnight, March 1, 1995. Applications arriving after that deadline are invalid and shall be returned to the sender.

(g) The state board shall not pay any claims until all claims have been reviewed and the state board can make a reasonable estimate of the total amount of valid claims. If the amount exceeds the amount of money in the Diesel Fuel Trust Fund, reimbursement for valid claims shall be prorated in each class specified in subdivision (c).


(h) The state board shall give notice of the reimbursement program by publication in major newspapers of general circulation in the state. That notice shall fully describe the reimbursement program, including, but not limited to, the limits of reimbursement and the possible proration of claims in the event that valid claims exceed the amount of money in the Diesel Fuel Trust Fund.

(i) The state board may expend an amount not to exceed three hundred thousand dollars (\$300,000) from the Diesel Fuel Trust Fund to administer the reimbursement program.

(j) The state board may contract with a private mediation firm to review and adjudicate claims.

(k) The state board may adopt guidelines for administering the reimbursement program after providing adequate opportunity for public review and comment. Guidelines adopted by the state board pursuant to this subdivision shall be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.


Comment. Section 41903 continues former Health and Safety Code Section 43702(c) without substantive change. Statements of legislative intent applicable to former Health and Safety Code Section 43702 now apply to this section. See, e.g., 1994 Cal. Stat. ch. 781, § 1 (legislative findings and intent).

 **Staff Note.** The introductory clause of this section specifies a deadline for implementation of the reimbursement program. This deadline provision may be obsolete. Furthermore, subdivision (f) provides that all claims submitted under the reimbursement must be postmarked by March 1, 1995. This suggests that the reimbursement program may have been completed and ended operation. If this is the case, then proposed Sections 41902-41904 are obsolete. The staff would like to receive input on the continued usefulness of these provisions.

§ 41904. Legislative findings and declarations

41904. The Legislature hereby finds and declares that the reimbursement program shall not be considered to be mitigation for the impacts of the standards adopted by the state board for the formulation of diesel fuel, and by the enactment of Sections 41902 and 41903 the state is not thereby assuming any responsibility for mitigating impacts on operators of diesel vehicles or equipment arising from the implementation of the standards. The Legislature further finds and declares that the reimbursement program is a proper use of public funds and serves a necessary public purpose.

Comment. Section 41904 continues former Health and Safety Code Section 43702(d) without change. Statements of legislative intent applicable to former Health and Safety Code Section 43702 now apply to this section. See, e.g., 1994 Cal. Stat. ch. 781, § 1 (legislative findings and intent).

 **Staff Note.** Health and Safety Code Sections 43706 and 43707 never became operative and have not been continued. The sections are subject to an operation contingency that was

not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 328-29 (1998).

CHAPTER 5. USED DIRECT IMPORT VEHICLES

§ 42000. “Used direct import vehicle”

42000. (a) For purposes of this chapter, “used direct import vehicle” means any 1975 or later model year direct import vehicle not required to be certified as a new direct import vehicle pursuant to this part.

(b) For purposes of this section, the age of a motor vehicle shall be determined by the following, in descending order of preference:

(1) From the first calendar day of the model year as indicated in the vehicle identification number.

(2) From the last calendar day of the month the vehicle was delivered by the manufacturer as shown on the foreign title document.

(3) From January 1 of the same calendar year as the model year shown on the foreign title document.

(4) From the last calendar day of the month the foreign title document was issued.

Comment. Section 42000 continues former Health and Safety Code Section 44200 without substantive change. The former unnumbered paragraphs have been designated as subdivisions, and the former subdivisions have been designated as paragraphs.

§ 42001. Certification program

42001. The state board shall adopt, by regulation, a certification program for used direct import vehicles. The state board shall issue a certificate of conformance to each used direct import vehicle which meets the requirements of this program.

Comment. Section 42001 continues former Health and Safety Code Section 44201 without change.

§ 42002. Necessity of certificate of conformance

42002. A used direct import vehicle which was not registered in this state prior to the adoption of regulations adopted pursuant to Section 42001, may not be registered in this state unless it has received a certificate of conformance from the state board, except as provided in Section 42009.

Comment. Section 42002 continues former Health and Safety Code Section 44202 without substantive change.

§ 42003. Certificate program components

42003. The certification program established pursuant to Section 42001 shall require all of the following components:

(a) A test of the vehicle’s emissions performed at a laboratory licensed by the state board.

(b) A determination that the emissions of the vehicle meet applicable emission standards adopted by the state board.

(c) Any vehicle labeling and description of any emissions-related modifications to the vehicle that the state board finds appropriate to assure that the emission-related system of the vehicle can be inspected, serviced, and repaired successfully throughout the state.

(d) Any other requirements the board may determine appropriate to assure the used direct import vehicle will continue to comply with emission standards in use, except that no requirement may be established to warrant the emissions control system or to recall vehicles which exhibit a defective emission control system subsequent to receiving a valid certificate of conformance.

Comment. Section 42003 continues former Health and Safety Code Section 44203 without substantive change.

§ 42004. Confirmatory test of vehicle emissions

42004. The state board may perform a confirmatory test of the vehicle's emissions prior to issuance of a certificate of conformity.

Comment. Section 42004 continues former Health and Safety Code Section 44204 without change.

§ 42005. Approval of laboratories

42005. The state board shall adopt regulations prescribing the requirements for any laboratory seeking approval as a state-licensed laboratory for purposes of this chapter. The requirements shall include, but not be limited to, all of the following:

(a) An agreement to random inspections of the facility and any vehicles on the premises by the state board or its designee.

(b) Recordkeeping for testing and quality control.

(c) An agreement to perform correlation testing at the request of the state board.

(d) An agreement to hold vehicles at the laboratory for up to 10 calendar days for the purpose of inspection and confirmatory testing upon request of the state board.

Comment. Section 42005 continues former Health and Safety Code Section 44205 without change.

§ 42006. Suspension, revocation or reinstatement of license

42006. A laboratory's license may be suspended or revoked by the state board, after a hearing, for failure to meet the requirements of licensing established in Section 42005 or for other cause specified by the state board in regulation. The state board shall adopt regulations governing the suspension, revocation, and reinstatement of the licenses.

Comment. Section 42006 continues former Health and Safety Code Section 44207 without substantive change.

§ 42007. Licensing fees

42007. The state board may, by regulation, impose fees for the licensing of laboratories and for the issuance of certificates of conformity to recover the state board's costs, including enforcement costs, of administration of any program the state board may establish pursuant to this chapter.

Comment. Section 42007 continues former Health and Safety Code Section 44208 without change.

§ 42008. Falsification of test records or reports

42008. Any person who falsifies any test record or report which has been submitted to any other person, the department, or the state board pursuant to this chapter is subject to punishment by a fine of not less than one thousand dollars (\$1,000) or more than five

thousand dollars (\$5,000), by imprisonment for not more than five years, or by both the fine and imprisonment.

Comment. Section 42008 continues former Health and Safety Code Section 44209 without change.

§ 42009. Certificate of conformity issued by EPA

42009. The requirements of Section 42002 do not apply to any motor vehicle having a certificate of conformity issued by the federal Environmental Protection Agency pursuant to the federal Clean Air Act (42 U.S.C. Section 7401, et seq.) and originally registered in another state by a person who was a resident of that state for at least one year prior to the original registration, who subsequently establishes residence in this state and who, upon registration of the vehicle in California, provides evidence satisfactory to the Department of Motor Vehicles of that previous residence and registration.

Comment. Section 42009 continues former Health and Safety Code Section 44210 without substantive change.

CHAPTER 6. LOW-EMISSION MOTOR VEHICLES

§ 42100. Legislative findings and declaration

42100. The Legislature finds and declares that emission of air pollutants from motor vehicles is a major contributor to air pollution within the State of California and, therefore, declares its policy to encourage the development and testing of various types of low-emission motor vehicles, which would contribute substantially to achieving a pure and healthy atmosphere for the people of this state.

Comment. Section 42100 continues former Health and Safety Code Section 43801 without change.

§ 42101. “Low-emission motor vehicle”

42101. As used in this chapter, “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.

(d) Is capable, in the case of a heavy-duty diesel vehicle, of meeting standards for either oxides of nitrogen or particulate matter that are twice as stringent as otherwise applicable.

Comment. Section 42101 continues former Health and Safety Code Section 43800 without substantive change.

 **Staff Note.** An amended form of Health and Safety Code Section 43800, and a new form that would become operative once the amended version becomes inoperative by its own terms never became operative and have not been continued. They are both subject to an

operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 329-30 (1998).


§ 42102. Identification of motor vehicles qualifying as low-emission vehicles

42102. (a) At the time of certification pursuant to Article 1 (commencing with Section 41500) of Chapter 3 the state board shall identify those motor vehicles which qualify as low-emission vehicles as defined in Section 30300. As part of the identification process, the state board shall require qualifying vehicles to be clearly labeled as low-emission vehicles. Labeling shall include a statement of the incremental cost, determined pursuant to Section 43804.3 of the Health and Safety Code, exempted from sales and use tax pursuant to subdivision (a) of Section 6356.5 of the Revenue and Taxation Code. For motor vehicles identified as low-emission motor vehicles by the board, the standards specified in Section 30300 shall be the applicable emission standards for Chapter 3 (commencing with Section 41500) of this part. The state board shall submit an annual listing of certified low-emission motor vehicles to the Department of General Services. Certification determinations for all vehicle and fuel types shall be based solely on vehicle emissions and shall not be based on emissions from the production, compressing, refining, or transportation of fuel.

(b) Each time a resolution is granted pursuant to Section 27156 of the Vehicle Code, the state board shall identify those motor vehicle control devices and applications which convert conventional vehicles into low-emission vehicles as identified in Section 30300. As part of the identification process, the state board shall require identified devices to be clearly labeled as such for purposes of those applications specified by the state board. Labeling shall include a statement that the device is exempt from sales and use tax pursuant to subdivision (b) of Section 6356.5 of Revenue and Taxation Code.

(c) For purposes of this section, “device” means physical equipment to be installed on a vehicle.

Comment. Section 42102 continues former Health and Safety Code Section 43802 without substantive change. The reference in subdivision (a) to the date on which the annual list submission requirement began (October 1, 1990) is obsolete and has not been continued.

 **Staff Note.** (1) The previous form of Health and Safety Code Section 43802 was repealed and replaced with the above text, operative on the filing of a certain report by the State Energy Resources Conservation and Development Commission. See 1989 Cal. Stat. ch. 990 §§ 3 & 8. According to a California Air Resources Board publication, this report was filed as required in 1992. See Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 331 (1998).

(2) The reference in subdivision (a) to Section 43804.3 is erroneous. Health and Safety Code Section 43804.3 does not exist. The staff would like to receive input on how to correct this error without changing the substance of existing law.

§ 42103. Compliance with requirements

42103. For each vehicle identified by the state board as a low-emission motor vehicle, the Department of General Services, in consultation with the state board and the State Energy Resources Conservation and Development Commission, shall determine if the low-emission motor vehicle meets all of the following requirements:

(a) The vehicle can be manufactured or obtained in sufficient numbers for the purpose of proper evaluation.

(b) The vehicle meets the performance needs for state vehicles.

(c) The cost of the vehicle does not exceed by more than 100 percent the average cost of comparable state vehicles purchased in the preceding fiscal year.

(d) If the vehicle is purchased by the state, there would be a sufficient number of servicing and maintenance outlets.

(e) The average operating and maintenance costs for the vehicle are comparable to the average operating and maintenance costs for all other state passenger vehicles. In no event, however, shall the average operating and maintenance costs for the vehicle exceed the average costs of operating and maintaining all other state vehicles by more than 50 percent.

Comment. Section 42103 continues former Health and Safety Code Section 43803 without change.

§ 42104. Purchase by state

42104. (a) If a low-emission motor vehicle meets the requirements of this article and the performance, cost, service, and maintenance requirements adopted by the Department of General Services for such motor vehicles, and if funds are appropriated for the purpose of purchasing motor vehicles, the state shall purchase, beginning with the next fiscal year, as many of the low-emission motor vehicles as the Department of General Services determines are reasonable and available to meet state needs.

(b) If a sufficient number of low-emission motor vehicles are available, the percentage of all such motor vehicles to be purchased in that year shall not be less than 25 percent of all motor vehicles purchased by the state in the preceding fiscal year. In purchasing vehicles pursuant to this section, the state shall seek to acquire a mix of least polluting and least cost qualifying low-emission motor vehicles.

Comment. Section 42104 continues former Health and Safety Code Section 43804 without substantive change.

§ 42105. Inapplicability of chapter to certain vehicles

42105. The provisions of this article shall not apply to the following motor vehicles:

(a) Patrol cars of the Department of the California Highway Patrol.

(b) Any motor vehicle classified as a special-purpose vehicle by the Department of General Services.

Comment. Section 42105 continues former Health and Safety Code Section 43805 without substantive change.

CHAPTER 7. MISCELLANEOUS PROVISIONS

§ 42200. Parking cash-out programs

42200. (a) In any air basin designated as a nonattainment area pursuant to Section 31252, each employer of 50 persons or more who provides a parking subsidy to employees, shall offer a parking cash-out program. "Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

(b) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(c) As used in this section, the following terms have the following meanings:

(1) “Employee” means an employee of an employer subject to this section.

(2) “Parking subsidy” means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

(d) Subdivision (a) does not apply to any employer who, on or before January 1, 1993, has leased employee parking, until the expiration of that lease or unless the lease permits the employer to reduce, without penalty, the number of parking spaces subject to the lease.

(e) It is the intent of the Legislature, in enacting this section, that the cash-out requirements apply only to employers who can reduce, without penalty, the number of paid parking spaces they maintain for the use of their employees and instead provide their employees the cash-out option described in this section.

Comment. Section 42200 continues former Health and Safety Code Section 43845 without substantive change.

§ 42201. Emission standards and procedures applicable to transit buses

42201. On or before January 1, 1993, the state board shall adopt emission standards and procedures applicable to new engines used in publicly owned and privately owned public transit buses, and shall make the standards and procedures effective on or before January 1, 1996. The standards shall consider the engine and fuel as a system and shall reflect the use of the best emission control technologies expected to be available at the time the standards and procedures become effective. In adopting standards, the state board shall consider the projected costs and availability of cleaner burning alternative fuels and low-emission vehicles compared with other air pollution control measures.

Comment. Section 42201 continues former Health and Safety Code Section 43806 without change. Statements of legislative intent applicable to former Health and Safety Code Section 43806 now apply to this section. See 1991 Cal. Stat. ch. 496, § 1 (legislative findings and declarations).

☞ **Staff Note.** This section specifies a deadline for adoption of standards and procedures. This deadline provision may be obsolete. The staff would like to receive input on two questions: (1) Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

TITLE 5. MOTOR VEHICLE INSPECTION PROGRAM

CHAPTER 1. LEGISLATIVE FINDINGS, DECLARATIONS, AND INTENT

§ 42300. General goals

42300. By the enactment of the amendments to this title made pursuant to Chapter 27 of the Statutes of 1994, the Legislature hereby declares its intent to meet or exceed the air quality standards established by the amendments enacted to the federal Clean Air Act in 1990 (42 U.S.C. Section 7401 *et seq.*, as amended by P.L. 101-549), to enhance and improve the existing vehicle inspection and maintenance network, and to periodically monitor the performance of the network against stated objectives.

Comment. Section 42300 continues former Health and Safety Code Section 44000 without substantive change.

1 **§ 42301. Principles guiding program implementation**

2 42301. It is the intent of the Legislature that the Department of Consumer Affairs and the
3 State Air Resources Board adhere to the following principles in implementing the motor
4 vehicle inspection and maintenance program established by Title 5 (commencing with
5 Section 42300):

6 (a) To promote consumer convenience and acceptance, a program phase-in of the
7 enhanced smog check program requirements in those areas newly subject to those
8 requirements should be developed. Any program phase-in should be consistent with the
9 availability of test, repair, referee, and other facilities necessary to provide reliable and
10 convenient service to vehicle owners subject to the program.

11 (b) Consistent with Section 44201, the Department of Consumer Affairs shall develop
12 and implement a thorough public awareness and education program that provides motor
13 vehicle owners with information about enhanced smog check program features, such as the
14 causes of smog check failures, vehicle retesting, repair, referee station options, the
15 importance of proper maintenance and effective repairs, and any economic relief programs.
16 This program is essential to the success of the inspection and maintenance program.

17 (c) It is the intent of the Legislature that the enhanced smog check program should be
18 reviewed and modified, as appropriate, based on improvements in the program,
19 technological advances in testing and diagnostic equipment, including remote sensing
20 devices, and vehicle emission control technology when appropriate. It is further the intent
21 of the Legislature that a new program should replace that program not later than 2005.

22 **Comment.** Section 42301 continues former Section 2 of Chapter 803 of the Statutes of
23 1997 without substantive change.

24 **§ 42302. Program benefits**

25 42302. The Legislature finds and declares that the motor vehicle inspection and
26 maintenance program has, since 1984, provided beneficial emission reductions without
27 undue inconvenience to California vehicle owners, and vehicle owners will benefit from the
28 maintenance by the state of a substantially decentralized program giving them a choice
29 among thousands of independent licensed stations able to perform both inspection and
30 repair of vehicles.

31 **Comment.** Section 42302 continues former Health and Safety Code Section 44000.5(a)
32 without substantive change.

33 **§ 42303. “Gross polluter” presumption not intended**

34 42303. With the enactment of this title, the Legislature does not intend to create a
35 statutory presumption that any motor vehicle, solely by virtue of make, model, or year of
36 manufacture, shall be classified or categorized as a “gross polluter” or a “gross polluting
37 vehicle.”

38 **Comment.** Section 42303 continues former Health and Safety Code Section 44000.5(b)
39 without substantive change.

40 **§ 42304. Unreasonable burden on fleet vehicles not intended**

41 42304. With the enactment of this title, the Legislature does not intend to place an
42 unreasonable burden on fleet vehicles with respect to compliance with smog inspection and
43 maintenance regulations.

44 **Comment.** Section 42304 continues former Health and Safety Code Section 44000.5(c)
45 without substantive change.

1 **§ 42305. Importance of motor vehicle emissions control**

2 42305. (a) Since the adoption of the federal Clean Air Act in 1972, California has made
3 great strides in improving air quality.

4 (b) To comply with federal air quality standards by the year 2010, and to meet every
5 Californian's desire for cleaner air, further reductions in air pollution are necessary.

6 (c) California's stationary source industries and businesses are already among the
7 cleanest in the world, and tighter regulations will achieve few additional pollution
8 reductions.

9 (d) Mobile sources generate roughly one-half of all the remaining air pollution in this
10 state, and the worst polluting 10 to 15 percent of automobiles generate one-half of all the
11 pollution caused by mobile sources.

12 (e) Motor vehicle inspection and maintenance programs can significantly reduce vehicle
13 emissions and thereby contribute to the attainment of clean air standards.

14 (f) Any motor vehicle inspection and maintenance program should provide the maximum
15 possible pollution reduction at a minimum cost and inconvenience to the people of the state.

16 (g) The Legislature recognizes that where new government regulations impose significant
17 costs on businesses or individuals, the government has a responsibility to ensure that the
18 burden of compliance does not fall unfairly on any one group or class of people.

19 **Comment.** Section 42305 codifies Section 1 of Chapter 803 of the Statutes of 1997, which
20 is repealed by the act that enacted this code.

21 **§ 42306. Purpose of 1994 amendments**

22 42306. The Legislature hereby finds and declares that California has been required, by
23 the amendments enacted to the Clean Air Act in 1990, and by regulations adopted by the
24 Environmental Protection Agency, to enhance California's existing motor vehicle
25 inspection and maintenance program to meet new, more stringent emission reduction
26 targets. Therefore, the Legislature declares that the amendments made to this title pursuant
27 to Chapter 27 of the Statutes of 1994 are adopted to implement further improvements in the
28 existing inspection and maintenance program so that California will meet or exceed the new
29 emission reduction targets.

30 **Comment.** Section 42306 continues former Health and Safety Code Section 44001(a)
31 without substantive change.

32 **§ 42307. Vehicle emission control strategies**

33 42307. The Legislature finds and declares all of the following:

34 (a) California is recognized as a leader in establishing performance standards for its air
35 quality programs and those standards have been adopted by many other states and
36 countries.

37 (b) Studies show that a minority of motor vehicles produce a disproportionate amount of
38 the pollution caused by vehicle emissions. Those vehicles are referred to as gross polluters.

39 (d) The concept of periodic testing alone does not act as a sufficient deterrent to
40 tampering, or as a sufficient incentive for vigilant vehicle maintenance by a significant
41 percentage of motorists. Gross polluters continue to be driven on the roadways of
42 California.

43 (d)(1) New technology, known as remote sensing, offers great promise as a cost-
44 effective means to detect vehicles emitting excess emissions as the vehicles are being
45 driven. This type of detection offers many valuable applications, especially its use between
46 scheduled tests, as an inexpensive, random, and pervasive means of identifying vehicles

1 which are gross polluters and targeting those vehicles for repair or other methods of
2 emission reduction.

3 (2) Another new technology, the development of emissions profiles for motor vehicles,
4 allows the motor vehicle inspection program to accurately identify both high- and low-
5 emitting vehicles. This technology may allow the full or partial exception of certain vehicles
6 from biennial certification requirements to the extent determined by the department.

7 (e) California continues to seek strict adherence to federal and state performance
8 standards and to results-based evaluations that meet the state's unique circumstances, and
9 which consist of all of the following:

10 (1) Acceptance of the shared obligation and personal responsibility required to
11 successfully inspect and maintain millions of motor vehicles. Specifically, that obligation
12 begins with this title, and extends through those regulators charged with its implementation
13 and enforcement. Through the enactment of the amendments to this title, made pursuant to
14 Chapter 27 of the Statutes of 1994, the Legislature hereby recognizes and seeks to
15 encourage, through a number of innovative and significant steps, the critical role that each
16 California motorist must play in maintaining his or her vehicle's emission control systems
17 in proper working order, so as to continuously meet mandated emission control standards
18 and ensure for California the clean air essential to the health of its citizens, its communities,
19 and its economy.

20 (2) A focus on the detection, diagnosis, and repair of broken, tampered, or
21 malfunctioning vehicle emission control systems.

22 (3) Flexibility to incorporate and implement future new scientific findings and
23 technological advances.

24 (4) Consideration of convenience and costs to those who are required to participate,
25 including motorists, smog check stations, and technicians.

26 (5) An enforcement program which is vigorous and effective and includes monitoring of
27 the performance of the smog check test or repair stations and technicians, as well as the
28 monitoring of vehicle emissions as vehicles are being driven.

29 **Comment.** Section 42307 continues former Health and Safety Code Section 44001(b)
30 without substantive change.

31 **§ 42308. Extent of vehicle emission control efforts**

32 42308. The Legislature finds and declares that California is, as of the effective date of
33 Chapter 803 of the Statutes of 1997, implementing a number of motor vehicle emission
34 reduction strategies far beyond the effort undertaken by any other state, including all of the
35 following:

36 (a) California certification standards exceed those of the other 49 states, increasing the
37 cost of a new car to a California consumer by one hundred fifty dollars (\$150) or more.

38 (b) State board regulations mandate increasing availability for sale of low-emission, ultra-
39 low emission, and zero-emission vehicles, including, by 2003, 10 percent zero-emission
40 vehicles.

41 (c) Effective in 1996, state board regulations mandate the reformulation of gasoline for
42 reduced emissions, at an estimated increased production cost of 5 to 15 cents per gallon due
43 to refinery modifications and higher production costs.

44 (d) Cleaner diesel fuel regulations, more stringent than federal standards, took effect in
45 California in October 1993, increasing diesel fuel costs by 4 to 6 cents per gallon.

46 (e) California law provides for vehicle registration surcharges of up to four dollars (\$4)
47 per vehicle in nonattainment areas for air quality-related projects.

48 (f) California law taxes cleaner fuels at one-half the rate of gasoline and diesel fuel.

- (g) California law provides tax credits for the purchase of low-emission vehicles.
- (h) California requires smog checks and repairs whenever a vehicle changes ownership, some 3 million vehicles annually, in addition to the regular biennial tests.
- (i) Low-value vehicles are discouraged from entering California due to the imposition of a three hundred dollar (\$300) smog impact fee on vehicles that are not manufactured to California certification standards.
- (j) California imposes sales taxes on motor vehicle fuels and dedicates most of those revenues to mass transit. This increases the cost of fuels by seven cents (\$.07) per gallon.
- (k) Transportation sales taxes in most urban counties also generate substantial funding for transit and other congestion-reduction measures, costing the average urban California resident fifty dollars (\$50) to one hundred dollars (\$100) annually, which would be the equivalent of another 8 to 16 cents per gallon of fuel.
- Comment.** Section 42308 continues former Health and Safety Code Section 44001(c) without substantive change.

§ 42309. Repair costs

42309. The Legislature hereby finds and declares as follows:
- (a) Under the state's previous smog check program, a motor vehicle owner could obtain unlimited repair cost waivers and, therefore, avoid repair of a polluting vehicle.
- (b) As a result, many vehicles were reregistered year after year and allowed to continue to pollute the air.
- (c) Repairing high-polluting and gross polluting vehicles (which pollute 2 to 25 times more than the average vehicle that passes a smog check) could significantly improve California air quality and allow the state to meet federal clean air goals.
- (d) The existing repair cost limit for smog repairs is a minimum of four hundred fifty dollars (\$450) in all areas where the enhanced smog check program operates; fifty dollars (\$50) to three hundred dollars (\$300) based on the model year of the vehicle where the enhanced program is not fully implemented; and no cost limit for the repair of gross polluting vehicles.
- (e) Without state financial assistance to repair a vehicle, a low-income vehicle owner is forced to either scrap the vehicle or drive an unregistered vehicle.
- Comment.** Section 42309 continues former Health and Safety Code Section 44001.3 without change.

CHAPTER 2. APPLICATION OF CHAPTER

§ 42400. Exemption of fleet vehicles

42400. Fleet vehicles shall not be included in the certification requirements established pursuant to Section 42907.
- Comment.** Section 42400 continues former Health and Safety Code Section 44000.5(a)(2) without substantive change.

§ 42401. Consistency with Vehicle Code provisions

42401. The motor vehicle inspection program provided by this title shall be in accordance with Sections 4000.1, 4000.2, and 4000.3 of the Vehicle Code.
- Comment.** Section 42401 continues former Health and Safety Code Section 44004(b) without substantive change.

1 **§ 42402. Off-shore islands**

2 42402. This title shall not apply to any vehicle permanently located on an island in the
3 Pacific Ocean located 20 miles or more from the mainland coast.

4 **Comment.** Section 42402 continues the second paragraph of former Health and Safety
5 Code Section 44004(a) without substantive change.

6 **CHAPTER 3. GENERAL DUTIES AND RESPONSIBILITIES**

7 **§ 42500. Responsibility for enforcement and administration**

8 42500. (a) A duty of enforcing and administering this title is vested in the chief of the
9 bureau who is responsible to the director.

10 (b) The department shall take those actions consistent with its statutory authority to
11 ensure that the reduction in vehicle emissions of hydrocarbons, carbon monoxide, and
12 oxides of nitrogen meet or exceed the reductions required by the amendments enacted to the
13 Clean Air Act in 1990. The department shall endeavor to achieve these vehicle emission
14 reductions as expeditiously as practicable, but not later than the deadlines established by the
15 amendments enacted to the Clean Air Act in 1990.

16 (c) The department shall also ensure that gross polluters are identified and failed when
17 tested pursuant to this title and that vehicles meeting the state standards are protected from
18 being falsely failed.

19 (d) The department may exercise the emergency rulemaking powers in Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government
21 Code in order to promptly issue any regulations required to implement the amendments to
22 this title made pursuant to Chapter 27 of the Statutes of 1994.

23 **Comment.** Section 42500 continues former Health and Safety Code Section 44001.5
24 without substantive change.

25 **§ 42501. Authority for implementation, administration and enforcement**

26 42501. (a) The department shall have the sole and exclusive authority within the state for
27 developing and implementing the motor vehicle inspection program in accordance with this
28 title.

29 (b) For the purposes of administration and enforcement of this title, the department, and
30 the director and officers and employees thereof, shall have all the powers and authority
31 granted under Division 1 (commencing with Section 1) and Division 1.5 (commencing with
32 Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the
33 Business and Professions Code and under Chapter 33 (commencing with Section 3300) of
34 Title 16 of the California Code of Regulations. Inspections and repairs performed pursuant
35 to this title, in addition to meeting the specific requirements imposed by this title, shall also
36 comply with all requirements imposed pursuant to Division 1 (commencing with Section 1)
37 and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with
38 Section 9880) of Division 3 of the Business and Professions Code and Chapter 33
39 (commencing with Section 3300) of Title 16 of the California Code of Regulations.

40 **Comment.** Section 42501 continues former Health and Safety Code Section 44002 without
41 substantive change. The former unnumbered paragraphs have been designated as
42 subdivisions.

1 **§ 42502. Cooperation between department and Department of Motor Vehicles**

2 42502. The Department of Motor Vehicles shall cooperate with the department in
3 implementing any changes to enhance the program to achieve greater efficiency, cost
4 effectiveness, and convenience, or to reduce excess emissions in accordance with this title.

5 **Comment.** Section 42502 continues former Health and Safety Code Section 44005(a)
6 without substantive change.

7 **§ 42503. Specifications and procedures**

8 42503. The department shall, with the cooperation of the state board and after
9 consultation with the motor vehicle manufacturers and representatives of the service
10 industry, research, establish, and update as necessary, specifications and procedures for
11 motor vehicle maintenance and tune-up procedures and for repair of motor vehicle pollution
12 control devices and systems. Licensed repair stations and qualified mechanics shall perform
13 all repairs in accordance with specifications and procedures so established.

14 **Comment.** Section 42503 continues former Health and Safety Code Section 44016 without
15 change.

16 **§ 42504. Statistical and emissions profiles of motor vehicles**

17 42504. (a) The department shall compile and maintain statistical and emissions profiles of
18 motor vehicles that are subject to the motor vehicle inspection program. The department
19 may use data from any source, including remote sensing data and other motor vehicle
20 inspection program data, to develop and confirm the validity of the profiles.

21 (b) The department, in cooperation with the state board, shall perform periodic analyses
22 of the statistical and emissions profiles created pursuant to subdivision (a). The department
23 and the state board, in consultation with the Inspection and Maintenance Review
24 Committee, may determine that, in addition to the vehicles excepted pursuant to Section
25 42900, certain other motor vehicles may be excepted from the biennial certification
26 requirements of this title without significantly compromising the emission reduction
27 objectives set forth in the State Implementation Plan (SIP).

28 (c) The department may conduct a pilot program to except from the biennial certification
29 requirement those vehicles that may be jointly determined by the department and the state
30 board, after consultation with the Inspection and Maintenance Review Committee, to
31 warrant exception. The department shall provide written notification to the Legislature
32 specifying the number of vehicles to be exempted as well as the geographic location and
33 duration of the pilot program not less than 30 days prior to the implementation of the pilot
34 program. The department shall submit the results of the pilot program to the state board and
35 the Inspection and Maintenance Review Committee for review. Subject to the approval of
36 the Environmental Protection Agency as an amendment to the SIP, the department may
37 establish the exception program as a permanent program.

38 (d) For vehicles four model years old or less, the department shall use test data generated
39 pursuant to Section 42907 to develop statistical and emissions profiles. The department
40 may use data from any source, including remote sensing data, warranty repair and recall
41 data, and other motor vehicle inspection program data, to develop and confirm the validity
42 of the data. If the department and state board jointly determine that the emissions from a
43 class of motor vehicles would potentially compromise the emission reduction objectives set
44 forth in the SIP, the state board shall consider appropriate corrective action, including, but
45 not limited to, recall pursuant to Section 41758.

Comment. Section 42504 continues former Health and Safety Code Section 44024.5 without substantive change.

§ 42505. Department as information clearinghouse

42505. The department shall act as a clearinghouse to provide access to the vendors who possess service information generated by the vehicle manufacturers.

Comment. Section 42505 continues former Health and Safety Code Section 44025 without change.

CHAPTER 4. INSPECTION AND MAINTENANCE REVIEW COMMITTEE

§ 42600. Creation of Inspection and Maintenance Review Committee

42600. The Inspection and Maintenance Review Committee is hereby created to analyze the effect of the improved inspection and maintenance program established by this title on motor vehicle emissions and air quality. The functions of the review committee shall be advisory in nature and primarily pertain to the gathering, analysis, and evaluation of information.

Comment. Section 42600 continues former Health and Safety Code Section 44021(a)(1) without substantive change.

§ 42601. Reimbursement and support

42601. The members of the review committee shall receive no compensation, but shall be reimbursed by the department for their reasonable expenses in performing committee duties. The state board and the department shall provide the review committee with any necessary technical and clerical support in its evaluation and study.

Comment. Section 42601 continues former Health and Safety Code Section 44021(a)(2) without change.

§ 42602. Composition of committee

42602. (a) The review committee shall consist of 13 members, nine to be appointed by the Governor, two by the Senate Committee on Rules, and two by the Speaker of the Assembly. All members shall be appointed to four-year terms, and the Governor shall appoint from among his or her appointees the chairperson of the review committee.

(b) The appointees of the Governor shall include an air pollution control officer from an enhanced program nonattainment area, three public members, an expert in air quality, an economist, a social scientist, a representative of the inspection and maintenance industry, and a representative of stationary source emissions organizations.

(c) The appointees of the Senate Committee on Rules shall include an environmental member with expertise in air quality, and a representative from the inspection and maintenance industry.

(d) The appointees of the Speaker of the Assembly shall include an environmental member with expertise in air quality, and a representative of a local law enforcement agency charged with prosecuting violations of this title in an enhanced program nonattainment area.

Comment. Section 42602 continues former Health and Safety Code Section 44021(a)(3) without substantive change.

1 **§ 42603. Method of proceeding**

2 42603. In preparing its evaluations of program effectiveness as provided in Section
3 42600, the review committee shall consult with the Department of the California Highway
4 Patrol, the Department of Motor Vehicles, and any other appropriate agencies, as well as
5 the department and the state board, shall schedule and conduct periodic meetings in the
6 performance of its duties, and shall meet and consult with local, state, and federal officials
7 involved in the evaluation of motor vehicle inspection and maintenance programs. At the
8 request of the committee, the department or the state board may, on behalf of the
9 committee, contract with independent entities to assist in the committee's evaluations.

10 **Comment.** Section 42603 continues former Health and Safety Code Section 44021(a)(4)
11 without substantive change.

12 **§ 42604. Reports and recommendations of committee**

13 42604. (a) The review committee shall submit periodic written reports to the Legislature
14 and the Governor on the performance of the program and make recommendations on
15 program improvements at least every 12 months. The review committee's reports shall
16 quantify the reduction in emissions and improvement in air quality attributed to the
17 program. Any reports, other than those required by this article, that the review committee is
18 required to provide pursuant to this title shall also be transmitted to the Secretary for
19 Environmental Protection and the Secretary for State and Consumer Services.

20 (b) The review committee shall work closely with all interested parties in preparing the
21 information required by subdivision (a) and Sections 42600 to 42603, inclusive, and shall
22 consider the reports provided pursuant to Section 42606. The review committee shall hold
23 at least one public hearing on its findings and recommendations prior to submitting its
24 reports. The reports shall include statutory language to implement its recommendations,
25 and shall recommend the timeframe for making any changes to the program. The review
26 committee shall seek comments from the department, the Department of Motor Vehicles,
27 the Department of the California Highway Patrol, and the state board prior to submitting its
28 reports, and those comments shall be published as an appendix to the report.

29 **Comment.** Section 42604 continues former Health and Safety Code Section 44021(b)-(c)
30 without substantive change.

31 **§ 42605. Participation in demonstration program**

32 42605. The review committee shall participate in the demonstration program authorized
33 by Section 43700, as provided by that section.

34 **Comment.** Section 42605 continues former Health and Safety Code Section 44021(d)
35 without substantive change.

36 **§ 42606. Submission of reports to committee**

37 42606. The state board, in cooperation with the department, shall periodically submit
38 reports to the review committee. The reports shall include an assessment of the impact on
39 emissions of continuing the exemption from inspection of motor vehicles newer than five
40 years old; a comparison of the actual mass emission reductions being achieved by the
41 enhanced program to those required by the State Implementation Plan; and
42 recommendations to improve the effectiveness and cost-effectiveness of the program,
43 including specific recommendations addressing any discrepancy between emissions
44 achieved and those in the State Implementation Plan. The first report shall be submitted not
45 later than January 1, 2000, and reports shall be submitted triennially thereafter. In

1 preparing the reports, the state board shall use data collected during inspections and repair,
2 and data collected using roadside measurements, and may conduct additional testing, as
3 determined to be necessary, to accurately quantify the mass emissions reduced.

4 **Comment.** Section 42606 continues former Health and Safety Code Section 44021(e)
5 without change.

6 CHAPTER 5. PROGRAM REQUIREMENTS

7 Article 1. General Requirements

8 § 42700. Enhanced and basic programs

9 42700. (a) An enhanced motor vehicle inspection and maintenance program is established
10 in each urbanized area of the state, any part of which is classified by the Environmental
11 Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a
12 moderate or serious nonattainment area for carbon monoxide with a design value greater
13 than 12.7 ppm, and in other areas of the state as provided in this title.

14 (b) The enhanced motor vehicle inspection and maintenance program established
15 pursuant to subdivision (a) shall be assessed jointly by the department and the state board
16 periodically to determine whether changes in the program may be warranted. On or before
17 January 1, 2003, the department and the state board shall jointly issue a report to the
18 Legislature based on those periodic assessments, recommending any modifications to the
19 enhanced program to improve its operations and lessen its impact on consumers while still
20 achieving the necessary emission reductions to attain air quality standards.

21 (c) A basic vehicle inspection and maintenance program shall be continued in all other
22 areas of the state where a program was in existence under this title as of the effective date of
23 Chapter 802 of the Statutes of 1997.

24 **Comment.** Section 42700 continues former Health and Safety Code Section 44003(a)
25 without substantive change.

26 § 42701. Enhanced program testing

27 42701. The enhanced program shall provide for the testing and retesting of vehicles in
28 accordance with Section 42754, Article 3 (commencing with Section 42800), and Article 4
29 (commencing with Section 42850).

30 **Comment.** Section 42701 continues former Health and Safety Code Section 44014.5(a)
31 without substantive change.

32 § 42702. Different requirements in different areas permitted

33 42702. The department may prescribe different test procedures and equipment
34 requirements for those areas described in Section 42700. Program components shall be
35 operated in all program areas unless otherwise indicated, as determined by the department.
36 In those areas where the biennial program is not implemented and smog check inspections
37 are required to complete the requirements set forth in Sections 4000.1 and 4000.2 of the
38 Vehicle Code, program elements that apply in basic areas, including test equipment
39 requirements for smog check stations, shall apply.

40 **Comment.** Section 42702 continues former Health and Safety Code Section 44003(b)
41 without substantive change.

1 **§ 42703. Implementation in attainment and nonattainment areas**

2 42703. (a) Districts classified as attainment areas may request the department to
3 implement all or part of the program elements defined in this title. However, the department
4 shall not implement the program established by Article 4 (commencing with Section 42850)
5 in any area other than an urbanized area, any part of which is classified by the
6 Environmental Protection Agency as a serious, severe, or extreme nonattainment area for
7 ozone or a moderate or serious nonattainment area for carbon monoxide with a design value
8 greater than 12.7 ppm.

9 (b) Districts that include areas classified as basic program nonattainment areas pursuant to
10 Section 42700 may, except as provided in subdivision (a), request the implementation in
11 those areas of test procedures and equipment required for enhanced program areas and any
12 other program requirement specified for enhanced program areas.

13 **Comment.** Section 42703 continues former Health and Safety Code Section 44003(c)
14 without substantive change.

15 **§ 42704. Required inspections**

16 42704. The program shall provide for inspection of specified motor vehicles, as
17 determined by the department, upon initial registration, biennially upon renewal of
18 registration, upon transfer of ownership, upon the issuance of a notice of noncompliance to
19 a gross polluter pursuant to Article 2 (commencing with Section 43650) of Chapter 7 and
20 as otherwise provided in this title.

21 **Comment.** Section 42704 continues former Health and Safety Code Section 44005(b)
22 without substantive change.

23 **§ 42705. Incorporation of new technologies into inspection program**

24 42705. (a) The department, in cooperation with the state board, shall investigate new
25 technologies, including the role of onboard diagnostic systems in vehicles, as a means both
26 for detecting excess emissions and defective emission control equipment, and for assisting
27 in determining what repairs would be effective. The department shall report to the review
28 committee on the results of its investigation for inclusion in the committee's annual report
29 to the Legislature.

30 (b) To incorporate new technologies into the program, the department may institute the
31 following changes if the department determines that the changes will be cost-effective and
32 convenient to vehicle owners:

33 (1) The schedule for testing and certifying vehicles.

34 (2) The location and method for complying with the test requirements otherwise
35 applicable under this title.

36 (3) The equipment requirements and repair procedures, including the imposition of new
37 or revised diagnostic procedures, to be used at licensed smog check stations.

38 (4) The training, skill, and licensing requirements for smog check technicians.

39 (5) The applicable test procedures and emission standards, as applied at smog check
40 stations, and during roadside inspection.

41 **Comment.** Section 42705 continues former Health and Safety Code Section 44024 without
42 substantive change.

43 **§ 42706. Advisory safety equipment and fuel efficiency checks**

44 42706. (a) The motor vehicle inspection program may include advisory safety equipment
45 maintenance checks, fuel efficiency checks, or both, on the motor vehicle if the department

1 finds that cost-effective methods for conducting those checks exist and that the cost of the
2 inspection to the vehicle owner due to the additional checks would not be increased by
3 more than 10 percent. The department shall specify the equipment to be checked and the
4 procedures for conducting those checks.

5 (b) Notwithstanding subdivision (a), a motor vehicle sold at retail by a lessor-dealer
6 licensed pursuant to Chapter 3.5 (commencing with Section 11600), or a dealer licensed
7 pursuant to Chapter 4 (commencing with Section 11700), of Division 5 of the Vehicle
8 Code shall not be subject to an advisory safety equipment maintenance check pursuant to
9 this section.

10 **Comment.** Section 42706 continues former Health and Safety Code Section 44018 without
11 change.

12 § 42707. Relationship to other programs

13 42707. The motor vehicle inspection program provided by this title, when implemented
14 in a district, shall supersede and replace any other program for motor vehicle emission
15 inspection in the district.

16 **Comment.** Section 42707 continues former Health and Safety Code Section 44004(a)(1)
17 without substantive change.

18 Article 2. Smog Check Stations

19 § 42750. Smog check stations

20 42750. The motor vehicle inspection program shall provide for privately operated
21 stations which shall be referred to as smog check stations and are authorized pursuant to
22 Section 42903 to issue certificates of compliance or noncompliance to vehicles which meet
23 the requirements of this title.

24 **Comment.** Section 42750 continues former Health and Safety Code Section 44010 without
25 substantive change.

26 § 42751. Smog test

27 42751. The test at the smog check stations shall be performed in accordance with
28 procedures prescribed by the department, pursuant to Section 42752, shall require, at a
29 minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in
30 all other program areas, and shall ensure all of the following:

31 (a) Emission control systems required by state and federal law are reducing excess
32 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
33 Section 42752.

34 (b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
35 the vehicle's emission control system.

36 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
37 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or
38 loaded mode are tested in accordance with procedures prescribed by the department. In
39 determining how loaded mode and evaporative emissions testing shall be conducted, the
40 department shall ensure that the emission reduction targets for the enhanced program are
41 met.

42 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
43 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
44 compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Sections 42306 to 42308, inclusive. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this title.

Comment. Section 42751 continues former Health and Safety Code Section 44012 without substantive change.

§ 42752. Standards and procedures

42752. (a)(1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this title.

(2) In prescribing the standards, the department shall undertake studies and experiments which are necessary and feasible, evaluate available data, and confer with automotive engineers.

(3) The standards shall be set at a level reasonably achievable for each class and model of motor vehicle when operating in a reasonably sound mechanical condition, allowing for the effects of installed motor vehicle pollution control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the test specified in Section 42751 will be operated, as soon as possible, with a substantial reduction in emissions, and shall be revised from time to time as experience justifies.

(b) The department, in cooperation with the state board, shall research and prescribe test procedures to be applied in inspecting motor vehicles under this title, which procedures shall be simple, cost-effective, and consistent with Section 42751. The department may revise the test procedures from time to time as experience justifies. To the extent that any test procedure revision requires new equipment, or a change in equipment, at licensed smog check stations, the department shall provide a reasonable period of time for the acquisition and installation of that new or changed equipment.

(c) Notwithstanding any other provision of this title, the maximum emission standards and test procedures prescribed in subdivisions (a) and (b) for a motor vehicle class and model year shall not be more stringent than the emission standards and test procedures under which that motor vehicle's class and model year was certified. Emission standards and test procedures prescribed by the department shall ensure that not more than 5 percent of the vehicles or engines, which would otherwise meet the requirements of this part, will fail the inspection and maintenance test for that class of vehicle or engine.

1 **Comment.** Section 42752 continues former Health and Safety Code Section 44013 without
2 substantive change.

3 ☞ **Staff Note. (1)** An amended form of Health and Safety Code Section 44013 and a new
4 form of that section that would become operative once the amended form becomes
5 inoperative by its own terms, never became operative and have not been continued. They are
6 subject to an operation contingency that has not been satisfied. See 1994 Cal. Stat. ch. 1192,
7 § 32; Air Resources Board, California Environmental Protection Agency, California Air
8 Pollution Control Laws 351-53 (1998).

9 **(2)** Health and Safety Code Section 44013.5 was added by a provision that never became
10 operative. See 1994 Cal. Stat. ch. 1192, §§ 23, 32; Air Resources Board, California
11 Environmental Protection Agency, California Air Pollution Control Laws 354 (1998). It was
12 later amended, in a bill that did not address the section's unsatisfied operation contingency.
13 See 1996 Cal. Stat. ch. 1154, § 21. This raises an interpretation problem. When the
14 Legislature amended the section (which had not yet been added because of the failed
15 contingency) did it intend to simply change the language of the section while preserving the
16 operation contingency, or did it intend to add the section, as amended, free of the operation
17 contingency? The staff believes that the former is more likely. The amendment of Section
18 44013.5 preserved the following provision, in subdivision (d):

19 (d) This section shall become inoperative pursuant to Section 33 of the act adding
20 this section or, in any case, five years from the date determined pursuant to Section
21 32 of the act adding this section, and on the January 1 following the date upon
22 which this section becomes inoperative, is repealed.

23 The references to "the act adding this section" are clearly references to sections of Chapter
24 1192 of the Statutes of 1994, the act that added the original section. This strongly suggests
25 that the subsequent amendment was not intended as an addition of a new section. If it were,
26 the references to sections of "the act adding this section" would make no sense. Because the
27 section appears to be inoperative, it has not been continued.

28 **§ 42753. Licensing of smog check stations**

29 42753. (a) Except as otherwise provided in this title, the testing and repair portion of the
30 program shall be conducted by smog check stations licensed by the department, and by
31 smog check technicians who have qualified pursuant to this title.

32 (b)(1) A smog check station may be licensed by the department as a smog check test-only
33 station and, when so licensed, need not comply with the requirement for onsite availability
34 of current service and adjustment procedures specified in paragraph (3) of subdivision (b)
35 of Section 43200. A smog check technician employed by a smog check test-only station
36 shall be qualified in accordance with this section.

37 (2) The department may authorize the placement of referees in qualified test-only stations
38 to provide referee services as a matter of convenience to the public. The department shall
39 supply those referees directly or through a contractor. A referee shall have no ownership
40 interest in the facility at which the referee is located. Referees shall be solely responsible for
41 issuing repair cost waivers, certificates of compliance or noncompliance, and hardship
42 extensions, in accordance with regulations adopted by the department.

43 (3) The department may adopt regulations to establish qualification standards and any
44 special administrative, operational, and licensure standards that the department determines
45 to be necessary for test-only stations that perform referee services.

46 (c) A smog check station may also be licensed as a repair-only station, and if so licensed,
47 may perform repairs to reduce excessive emissions on vehicles which have failed the smog
48 check test. Repair procedures and equipment requirements shall be established by the

department. Technicians employed by a smog check repair-only station shall be qualified in accordance with this section.

(d) Smog check technicians are qualified to test and repair only those classes and categories of vehicles for which they have passed a qualification test administered by the department. The department shall provide for smog check technicians to be qualified for different categories of motor vehicle inspection based on vehicle classification and model year.

Comment. Section 42753 continues former Health and Safety Code Section 44014(a)-(d) without substantive change. Health and Safety Code Section 44014(e) is continued without substantive change in Section 43100.

§ 42754. Voluntary certification of smog check stations

42754. The department shall develop a program for the voluntary certification of licensed smog check stations, or the department may accept a smog check station certification program proposed by accredited industry representatives. Such a certification program, which may be called a “gold shield” program, shall be for the purpose of providing consumers, whose vehicles fail an emissions test at a test-only facility, an option of services at a single location to prevent the necessity for additional trips back to the test-only facility for vehicle certification.

Comment. Section 42754 continues former Health and Safety Code Section 44014.2 without change.

§ 42755. Advertisement of voluntary certification

42755. (a) A licensed smog check station that has been certified pursuant to Section 42754 may advertise that fact, and the advertisement may include the scope of work established by the program.

(b) It is an unfair business practice and a violation of Section 17500 of the Business and Professions Code for any licensed smog check station that is not so certified to advertise as having obtained certification or as complying with the scope of work, code of ethics, or certification standards established by the certification program.

Comment. Section 42755 continues former Health and Safety Code Section 44014.4 without substantive change.

§ 42756. Required signs

42756. (a) Each smog check station shall have posted conspicuously in an area frequented by customers a sign advising of the minimum or maximum amounts established by law to be spent on repairs required to cause a motor vehicle to pass a smog check. The sign shall be required in all stations where smog check inspections are performed. In stations where licensed smog check technician repairs are not performed, the station shall have posted conspicuously in an area frequented by customers a statement that repair technicians are not available and repairs are not performed.

(b) The specific amounts enumerated on the sign shall be consistent with Section 42953 and shall also refer to the exceptions in subdivision (d) of Section 42953.

(c) The sign shall include language, as determined by the department, to warn consumers of the penalties for obtaining a certificate or economic hardship extension by means of fraud.

Comment. Section 42756 continues former Health and Safety Code Section 44017.3 without substantive change.

1 **§ 42757. Alternative workday schedule for referee stations**

2 42757. At the earliest possible date, as determined by the bureau, the bureau shall
3 implement at the referee stations, where appropriate, an alternative workday schedule
4 which substitutes Saturday working hours in lieu of another day during the Monday
5 through Friday workweek, in order to provide for increased availability of referee station
6 services.

7 **Comment.** Section 42757 continues former Health and Safety Code Section 44017.5
8 without change.

9 Article 3. Test-Only Facility Activities and Standards

10 **§ 42800. Repair at test-only facilities**

11 42800. The repair of vehicles at test-only facilities shall be prohibited, except that the
12 minor repair of components damaged by station personnel during inspection at the station,
13 any minor repair that is necessary for the safe operation of a vehicle while at a station, or
14 other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken
15 at no charge to the vehicle owner or operator if authorized in advance in writing by the
16 department.

17 **Comment.** Section 42800 continues former Health and Safety Code Section 44014.5(b)
18 without substantive change.

19 **§ 42801. List of repair facilities**

20 42801. The department shall provide for the distribution to consumers by test-only
21 facilities of a list, compiled by region, of smog check stations licensed to make repairs of
22 vehicular emission control systems. A test-only facility shall not refer a vehicle owner to
23 any particular provider of vehicle repair services.

24 **Comment.** Section 42801 continues former Health and Safety Code Section 44014.5(c)
25 without substantive change.

26 **§ 42802. Standards**

27 42802. The department shall establish standards for training, equipment, performance, or
28 data collection for test-only facilities.

29 **Comment.** Section 42802 continues former Health and Safety Code Section 44014.5(d)
30 without change.

31 **§ 42803. Activities constituting conflict of interest prohibited**

32 42803. The department shall prohibit test-only facilities from engaging in other business
33 activities that represent a conflict of interest, as determined by the department.

34 **Comment.** Section 42803 continues former Health and Safety Code Section 44014.5(e)
35 without substantive change.

36 **§ 42804. Fees**

37 42804. The test-only facility may charge a fee, established by the department, sufficient
38 to cover the facility's cost to perform the tests or services, including, but not limited to,
39 referee services and the issuance of waivers and hardship extensions required by this title.
40 In addition, the station shall charge and collect the certificate fee established pursuant to

1 Section 44001. This section shall apply only to facilities contracted for pursuant to Section
2 42851.

3 **Comment.** Section 42804 continues former Health and Safety Code Section 44014.5(f)
4 without substantive change.

5 **§ 42805. Sufficient number of facilities**

6 42805. The department shall ensure that there is a sufficient number of test-only facilities
7 to provide convenient testing for the following vehicles:

8 (a) All vehicles identified and confirmed as gross polluters pursuant to Sections 43650
9 and Section 27156 of the Vehicle Code.

10 (b)(1) Vehicles initially identified as gross polluters by a smog check station licensed as a
11 test-and-repair station and certified pursuant to Section 42754 may be issued a certificate of
12 compliance by a test-only facility or by the licensed smog check station certified pursuant to
13 Section 42754 at which they were initially identified as a gross polluter.

14 (2) For purposes of this section, the department may conduct a pilot program to allow
15 vehicles initially identified as gross polluters to be repaired and issued a certificate of
16 compliance by a facility licensed and certified pursuant to Section 42754. For the purposes
17 of this pilot program, the department may adopt regulations imposing additional station
18 requirements.

19 (c) All vehicles designated by the department pursuant to Section 42907 and Article 8
20 (commencing with Section 43050).

21 (d) Vehicles issued an economic hardship extension in the previous biennial inspection of
22 the vehicle.

23 **Comment.** Section 42805 continues former Health and Safety Code Section 44014.5(g)
24 without substantive change.

25 **§ 42806. Facilities authorized to referee**

26 42806. The department shall provide a sufficient number of test-only facilities authorized
27 to perform referee functions to provide convenient testing for those vehicles that are
28 required to report to, and receive a certificate of compliance from, a test-only facility by this
29 title, including all of the following:

30 (a) All vehicles seeking to utilize state-operated financial assistance or inclusion in
31 authorized scrap programs.

32 (b) All vehicles unable to obtain a certificate of compliance from a licensed smog check
33 station pursuant to Sections 42950 and 42951.

34 (c) Any other vehicles that may be designated by the department.

35 **Comment.** Section 42806 continues former Health and Safety Code Section 44014.5(h)
36 without substantive change.

37 **§ 42807. Testing of gross polluters**

38 42807. Gross polluters shall be referred to a test-only facility, or a test-and-repair station
39 that is both licensed and certified pursuant to Sections 42753 and 42754 and is participating
40 in the pilot program pursuant to paragraph (2) of subdivision (b) of Section 42805, for a
41 postrepair inspection and retest pursuant to Section 42805. Simply passing the emissions
42 test shall not be a sufficient condition for receiving a certificate of compliance. A certificate
43 of compliance shall only be issued to a vehicle that does not have any defects with its
44 emission control system or any defects that could lead to damage of its emission control
45 system, as provided in regulations adopted by the department.

1 **Comment.** Section 42807 continues former Health and Safety Code Section 44014.5(i)
2 without substantive change.

3 Article 4. Test-Only Facility Program

4 **§ 42850. Testing of state vehicle fleet**

5 42850. (a) The department shall implement a program with the capacity to commence, by
6 January 1, 1995, the testing at test-only facilities, in accordance with this title, of 15
7 percent of that portion of the total state vehicle fleet consisting of vehicles subject to
8 inspection each year in the biennial program and that are registered in the enhanced program
9 area, as established pursuant to subdivision (a) of Section 42700.

10 (b)(1) The department shall increase the capacity of the program so that the capacity
11 exists to commence, by January 1, 1996, the testing at test-only facilities of that portion of
12 the state vehicle fleet that is subject to inspection and is registered in the enhanced program
13 area, which is sufficient to meet the emission reduction performance standards established
14 by the Environmental Protection Agency in regulations adopted pursuant to the Clean Air
15 Act Amendments of 1990, taking into account the results of the pilot demonstration
16 program established pursuant to Section 43700.

17 (2) Upon increasing the capacity of the program pursuant to paragraph (1), the
18 department shall afford smog check stations that are licensed and certified pursuant to
19 Sections 42753 and 42754 the initial opportunity to perform the required inspections. The
20 department shall adopt, by regulation, the requirements to provide that initial opportunity.

21 (3) If the department determines that there is an insufficient number of licensed test-only
22 smog check stations operating in an enhanced area to meet the increased demand for test-
23 only inspections, the department may increase the capacity of the program by utilizing
24 existing contracts.

25 (c) The program shall utilize loaded mode dynamometer test equipment, as determined
26 through the pilot demonstration program.

27 **Comment.** Section 42850 continues former Health and Safety Code Section 44010.5(a)-(c)
28 without substantive change.

29 **§ 42851. Use of private contractors**

30 42851. (a) The department may implement the program established pursuant to
31 subdivision (a) of Section 42850 through a network of privately operated test-only facilities
32 established pursuant to contracts to be awarded pursuant to this article.

33 (b) The initial contracts awarded pursuant to this article shall terminate not later than
34 seven years from the date that the contracts were executed.

35 **Comment.** Section 42851 continues former Health and Safety Code Section 44010.5(e)
36 without substantive change.

37 **§ 42852. Exclusive contracts prohibited**

38 42852. No person shall be a contractor of the department for test-only facilities in all air
39 basins, exclusively, where the enhanced program is in effect unless the department
40 determines, after a public hearing, that there is not more than one qualified contractor. The
41 South Coast Air Basin shall have at least two contractors, and the combined enhanced
42 program area that includes Bakersfield, Fresno, and Sacramento shall have at least two
43 contractors. The department may operate test-only facilities on an interim basis while
44 contractors are being sought.

1 **Comment.** Section 42852 continues former Health and Safety Code Section 44010.5(f)
2 without substantive change.

3 **§ 42853. Procedure for awarding contracts**

4 42853. (a) In awarding contracts under this article, the department shall request bids
5 through the issuance of a request for proposal.

6 (b) The department shall first determine which bidders are qualified, and then award the
7 contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

8 (c) The department shall provide a contractual preference, as determined by the
9 department, not to exceed 10 percent of the total proposal evaluation score, based on the
10 following factors:

11 (1) Up to 5 percent to bidders providing firm commitments to employ businesses that are
12 licensed or otherwise substantially participating in the smog check program after January 1,
13 1994.

14 (2) Up to 5 percent to bidders based on the extent to which bidders maximize the
15 potential economic benefit of the smog check program on this state over the term of the
16 contract. That potential economic benefit shall include the percentage of work performed by
17 California-based firms, the potential of the total project work force who will be California
18 residents, and the percentage of subcontracts that will be awarded to California-based
19 firms.

20 (d) Any contract executed by the department for the operation of a test-only facility shall
21 expressly require compliance with this title and any regulations adopted by the department
22 pursuant to this title.

23 **Comment.** Section 42853 continues former Health and Safety Code Section 44010.5(g)
24 without substantive change. Statements of legislative intent applicable to former Health and
25 Safety Code Section 44010.5(g) now apply to this section. See, e.g., Senate Journal, 1993-94
26 Reg. Sess., p. 7029 (legislative intent).

27 **§ 42854. Sufficient facilities**

28 42854. The department shall ensure that there is a sufficient number of test-only
29 facilities, and that they are properly located, to ensure reasonable accessibility and
30 convenience to all persons within an enhanced program area, and that the waiting time for
31 consumers is minimized. The department may operate test-only facilities on an interim basis
32 to ensure convenience to consumers. The department shall specify in the request for
33 proposal the minimum number of test-only facilities that are required for the program. Any
34 contracts initially awarded pursuant to this article shall ensure that the contractors are
35 capable of fulfilling the requirements of subdivision (a) of Section 42850.

36 **Comment.** Section 42854 continues former Health and Safety Code Section 44010.5(h)
37 without substantive change.

38 **§ 42855. Management of program facilities**

39 42855. The department shall ensure the effective management of the test-only facilities
40 and shall specify in the request for proposal that a manager be present during all hours of
41 station operation.

42 **Comment.** Section 42855 continues former Health and Safety Code Section 44010.5(k)
43 without substantive change.

1 **§ 42856. Transition of existing facilities**

2 42856. The department shall ensure and facilitate the effective transition of employees of
3 businesses that are licensed or otherwise substantially participating in the smog check
4 program and may specify in the request for proposal that test-only facility management be
5 Automotive Service Excellence (ASE) certified, or be certified by a comparable program as
6 determined by the department.

7 **Comment.** Section 42856 continues former Health and Safety Code Section 44010.5(l)
8 without substantive change.

9 **§ 42857. Referee functions**

10 42857. As part of the contracts to be awarded pursuant to Section 42851, the department
11 may require contractors to perform functions previously undertaken by referee stations
12 throughout the state, as determined by the department, at some or all of the affected stations
13 in enhanced areas, and at additional stations outside enhanced areas only to the extent
14 necessary to provide appropriate access to referee functions.

15 **Comment.** Section 42857 continues former Health and Safety Code Section 44010.5(m)
16 without substantive change.

17 **§ 42858. Exemption from contracting requirements**

18 42858. Notwithstanding any other provision of law, to avoid delays to the program
19 implementation timeline required by this title or the Clean Air Act, the Department of
20 General Services, at the request of the department, may exempt contracts awarded pursuant
21 to this article from existing laws, rules, resolutions, or procedures that are otherwise
22 applicable, including, but not limited to, restrictions on awarding contracts for more than
23 three years. The department shall identify any exemptions requested and granted pursuant
24 to this section and report thereon to the Legislature.

25 **Comment.** Section 42858 continues former Health and Safety Code Section 44010.5(n)
26 without substantive change.

27 **§ 42859. Prerequisite to implementation**

28 42859. This article shall not be implemented unless the memorandum of agreement
29 described in Section 43702 is signed by both the California Environmental Protection
30 Agency and the Environmental Protection Agency.

31 **Comment.** Section 42859 continues former Health and Safety Code Section 44010.5(o)
32 without substantive change.

33 **§ 42860. Implementation areas**

34 42860. The department shall implement the program established in this article only in
35 urbanized areas classified by the Environmental Protection Agency as a serious, severe, or
36 extreme nonattainment area for ozone or a moderate or serious nonattainment area for
37 carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the
38 program in any other area.

39 **Comment.** Section 42860 continues former Health and Safety Code Section 44010.5(p)
40 without substantive change.

§ 42861. Mitigation of participation costs

42861. If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars (\$10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

Comment. Section 42861 continues former Health and Safety Code Section 44010.5(q) without substantive change.

§ 42862. Public education

42862. The department shall ensure an effective transition to the new program by implementing an effective public education program and may specify in the request for proposal a dollar amount that bidders are required to include in their bids for public education activities, to be implemented pursuant to Section 44201.

Comment. Section 42862 continues former Health and Safety Code Section 44010.5(j) without substantive change.

§ 42863. Ownership of data

42863. Any data generated at a test-only facility shall be the property of the state, and shall be fully accessible to the department at any time. The department may set contract specifications for the storage of that data in a central data storage system or facility designated by the department.

Comment. Section 42863 continues former Health and Safety Code Section 44010.5(i) without substantive change.

§ 42864. Testing of vehicles not subject to the program

42864. Vehicles in the enhanced program area which are not subjected to the program established by this article may be tested at smog check stations licensed pursuant to Section 42753 that use loaded mode dynamometers.

Comment. Section 42864 continues former Health and Safety Code Section 44010.5(d) without substantive change.

Article 5. Certification

§ 42900. Certificate of compliance or noncompliance required

42900. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 42751, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3)(A) Prior to January 1, 2003, any motor vehicle manufactured prior to the 1974 model year.

(B) Beginning January 1, 2003, any motor vehicle that is 30 or more model years old.

(4)(A) Any motor vehicle four or less model years old.

(B) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 42751.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 42907 or any other provision of this title authorizing out-of-cycle testing.

(5) Any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 42504.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Article 8 (commencing with Section 43050) if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

Comment. Section 42900 continues former Health and Safety Code Section 44011 without substantive change.

§ 42901. “Registered within an area designated for program coverage”

42901. For purposes of Section 42900, the term “registered within an area designated for program coverage” includes any vehicle registered pursuant to the Vehicle Code in this state when the registered owner’s mailing or residence address is not located within this state, or when the address at which the vehicle is garaged is not located within this state.

Comment. Section 42901 continues former Health and Safety Code Section 44011.1 without substantive change.

§ 42902. Documentation of exemption from Section 42900

42902. Documentation that a motor vehicle is exempt from the requirements of Section 42900 may not be based solely on the owner’s statement that the vehicle is in an exempt category. Physical inspection of the vehicle by the department is required unless alternative documentation satisfactory to the department is available.

Comment. Section 42902 continues former Health and Safety Code Section 44011.5 without substantive change.

§ 42903. Issuance of certificate

42903. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this title, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 42753 and 42754 and is participating in the pilot program pursuant to paragraph (2) of subdivision (b) Section 42805.

(3) A vehicle described in Sections 42950 and 42951.
(b) If a vehicle meets the requirements of Section 42751, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

Comment. Section 42903 continues former Health and Safety Code Section 44015(a)-(b) without substantive change.

§ 42904. Validity period of certificate

42904. A certificate of compliance or noncompliance shall be valid for 90 days.

Comment. Section 42904 continues former Health and Safety Code Section 44015(e) without substantive change.

§ 42905. Testing before date required

42905. A test may be made at any time within 90 days prior to the date otherwise required.

Comment. Section 42905 continues former Health and Safety Code Section 44015(f) without substantive change.

§ 42906. Uncertified new vehicles and engines

42906. (a) A certificate of compliance shall not be issued to any new motor vehicle or motor vehicle with a new motor vehicle engine which is not certified by the state board, and which is the subject of a transaction prohibited by Section 41552 or 41553.

(b) With respect to a new motor vehicle or motor vehicle with a new motor vehicle engine not certified by the state board which is in violation of Article 2 (commencing with Section 41550) of Chapter 3, but which is not the subject of a transaction prohibited by Section 41552 or 41553, a certificate of noncompliance shall be issued. The certificate of noncompliance shall indicate the basis for nonconformity and the data shall be sent to the state board.

Comment. Section 42906 continues former Health and Safety Code Section 44015.5 without substantive change.

§ 42907. Certification of vehicles at test-only facilities

42907. (a) The department shall require 2 percent of the vehicles required to obtain a certificate of compliance each year in enhanced program areas to receive their certificate from a test-only facility.

(b) The department may require a number not to exceed 2 percent of the vehicles required to obtain a certificate of compliance each year in basic program areas to receive their certificate from a test-only facility.

(c) The vehicles specified in subdivisions (a) and (b) shall be selected at random. The vehicles may be included among the vehicles subject to Section 42864, to the extent that the vehicles are registered in enhanced program areas. The review committee may review the selection process to ensure that it is a statistically significant representation of the vehicles subject to the basic and enhanced programs. The department shall select the vehicles and the Department of Motor Vehicles shall notify the owners of their obligation under this section pursuant to Section 4000.3 of the Vehicle Code. Selection shall be made from vehicles in an area where a test-only facility is located.

Comment. Section 42907 continues former Health and Safety Code Section 44014.7 without substantive change.

1 **§ 42908. Motor vehicles owned by public agencies**

2 42908. (a) Every public agency, including, but not limited to, a publicly owned public
3 utility, owning or operating any motor vehicle that is exempt from annual renewal of
4 registration, and is otherwise subject to this title, shall obtain for the vehicle a certificate of
5 compliance with the same frequency as is required for vehicles subject to renewal of
6 registration. The cost limitations specified in Section 42953 do not apply to any vehicle
7 owned or operated by a public agency.

8 (b) Certificates of compliance required by subdivision (a) shall be issued if the vehicle
9 meets the requirements of Section 42751 using a test analyzer system meeting the
10 requirements of the department. Any certificate so issued shall be indexed by vehicle
11 license plate number or vehicle identification number and retained by the public agency for
12 not less than three years, and shall be available for inspection by the department.

13 (c) Every public agency subject to subdivision (a) shall annually report to the department
14 the number of certificates issued, the number of motor vehicles owned, and the schedule
15 under which the motor vehicles were issued certificates of compliance.

16 (d) The department may accept proof of compliance with this section other than by a
17 certificate of compliance.

18 **Comment.** Section 42908 continues former Health and Safety Code Section 44019 without
19 substantive change.

20 Article 6. Repair Cost Waivers and Economic Hardship Extensions

21 **§ 42950. Repair cost waiver**

22 42950. A repair cost waiver shall be issued, upon request of the vehicle owner, by an
23 entity authorized to perform referee functions for a vehicle that has been properly tested but
24 does not meet the applicable emission standards when it is determined that no adjustment or
25 repair can be made that will reduce emissions from the inspected motor vehicle without
26 exceeding the applicable repair cost limit established under Section 42953 and that every
27 defect specified by paragraph (2) of subdivision (a) of Section 41600, and by paragraphs
28 (2) and (3) of subdivision (a) of Section 41601, has been corrected. A repair cost waiver
29 issued pursuant to this section shall be accepted in lieu of a certificate of compliance for the
30 purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver
31 shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle
32 owner has expended an amount equal to the applicable repair cost limit specified in Section
33 42953.

34 **Comment.** Section 42950 continues former Health and Safety Code Section 44015(c)(1)
35 without substantive change.

36 **§ 42951. Economic hardship extension**

37 42951. An economic hardship extension shall be issued, upon request of a qualified low-
38 income motor vehicle owner, by an entity authorized to perform referee functions, for a
39 motor vehicle that has been properly tested but does not meet the applicable emission
40 standards when it is determined that no adjustment or repair can be made that will reduce
41 emissions from the inspected motor vehicle without exceeding the applicable repair cost
42 limit, as established pursuant to Section 42954, that every defect specified in paragraph (2)
43 of subdivision (a) of Section 41600, and in paragraphs (2) and (3) of subdivision (a) of
44 Section 41601, has been corrected, that the low-income vehicle owner would suffer an
45 economic hardship if the extension is not issued, and that all appropriate emissions-related

repairs up to the amount of the applicable repair cost limit in Section 42954 have been performed.

Comment. Section 42951 continues former Health and Safety Code Section 44015(c)(2) without substantive change.

§ 42952. Limitation on repair cost waivers and economic hardship extensions

42952. No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(a) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(b) Upon initial registration of all of the following: a direct import motor vehicle, a motor vehicle previously registered outside this state, a dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code, a motor vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

Comment. Section 42952 continues former Health and Safety Code Section 44015(d) without substantive change.

§ 42953. Repair cost limits

42953. (a) Except as otherwise provided in this section or Section 42954, a motor vehicle owner shall qualify for a repair cost waiver only after expenditure of not less than four hundred fifty dollars (\$450) for repairs, including parts and labor.

(b) The limit established pursuant to subdivision (a) shall not become operative until the department issues a public notice declaring that the program established pursuant to Article 4 (commencing with Section 42850) is operational in the relevant geographical areas of the state, or until the date that testing in those geographic areas is operative using loaded mode test equipment, as defined in this chapter, whichever occurs first. Prior to that time, the following cost limits shall remain in effect:

(1) For motor vehicles of 1971 and earlier model years, fifty dollars (\$50).

(2) For motor vehicles of 1972 to 1974, inclusive, model years, ninety dollars (\$90).

(3) For motor vehicles of 1975 to 1979, inclusive, model years, one hundred twenty-five dollars (\$125).

(4) For motor vehicles of 1980 to 1989, inclusive, model years, one hundred seventy-five dollars (\$175).

(5) For motor vehicles of 1990 to 1995, inclusive, model years, three hundred dollars (\$300).

(6) For motor vehicles of 1996 and later model years, four hundred fifty dollars (\$450).

(c) The department shall periodically revise the repair cost limits specified in subdivisions (a) and (b) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics.

(d) No repair cost limit shall be imposed in those cases where emissions control equipment is missing or is partially or totally inoperative as a result of being tampered with.

1 **Comment.** Section 42953 continues former Health and Safety Code Section 44017 without
2 substantive change.

3 ☞ **Staff Note.** Subdivision (b) refers to “loaded mode test equipment, as defined in this
4 chapter.” The “term loaded mode test equipment” is not defined anywhere in this part. The
5 staff would like to receive input on whether the addition of such a definition would be useful,
6 and if so, would like to receive suggested language for such a definition.

7 **§ 42954. Repair cost limit for low-income vehicle owner**

8 42954. (a) For purposes of this section, “low-income motor vehicle owner” means a
9 person whose income does not exceed 175 percent of the federal poverty level.

10 (b) Notwithstanding subdivision (a) of Section 42953, for low-income motor vehicle
11 owners qualified under Article 2 (commencing with Section 44050) of Chapter 10, the
12 repair cost limit, including parts and labor, shall be two hundred fifty dollars (\$250) in all
13 areas where the program operates. However, the department may decrease that amount, to
14 not more than two hundred dollars (\$200), if the department determines that participation
15 rates are unsatisfactory.

16 (c) Until a low-income repair assistance program becomes effective pursuant to Article 2
17 (commencing with Section 44050) of Chapter 10, an economic hardship extension shall be
18 issued upon request to a qualified low-income motor vehicle owner whose motor vehicle
19 has been tested but does not meet applicable emissions standards and the necessary repairs
20 exceed the repair cost limit specified in subdivision (b).

21 **Comment.** Section 42954 continues former Health and Safety Code Section 44017.1
22 without substantive change.

23 Article 7. Diesel Smoke Emissions

24 **§ 43000. Prohibition**

25 43000. The use of a heavy-duty motor vehicle that emits excessive smoke is prohibited.

26 **Comment.** Section 43000 continues former Health and Safety Code Section 44011.6(a)
27 without substantive change.

28 **§ 43001. Enforcement responsibility**

29 43001. The state board shall enforce the prohibition against the use of heavy-duty motor
30 vehicles that are determined to have excessive smoke emissions and shall enforce any
31 regulation prohibiting the use of a heavy-duty motor vehicle determined to have other
32 emissions-related defects, using the test procedure established pursuant to this article.

33 **Comment.** Section 43001 continues former Health and Safety Code Section 44011.6(e)
34 without substantive change.

35 **§ 43002. Inspections**

36 43002. Following the adoption of regulations pursuant to this article, the state board may
37 commence inspecting heavy-duty motor vehicles. With the concurrence of the Department
38 of the California Highway Patrol, these inspections may be conducted in conjunction with
39 the safety and weight enforcement activities of the Department of the California Highway
40 Patrol, or at other locations selected by the state board or the Department of the California
41 Highway Patrol. Inspection locations may include private facilities where fleet vehicles are
42 serviced or maintained. The state board and the Department of the California Highway

Patrol may conduct these inspections either cooperatively or independently, and the state board may contract for assistance in the conduct of these inspections.

Comment. Section 43002 continues former Health and Safety Code Section 44011.6(i) without substantive change.

§ 43003. Development of testing and inspection procedures

43003. (a) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections.

(b) The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles. However, visual or functional inspection procedures for heavy-duty gasoline motor vehicles shall not be more stringent than those prescribed for heavy-duty gasoline motor vehicles subject to biennial inspection pursuant to Section 42752.

(c) The chairperson of the state board shall appoint an ad hoc advisory committee which shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or heavy-duty diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this section and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

Comment. Section 43003 continues former Health and Safety Code Section 44011.6(b) without substantive change.

§ 43004. Testing and inspection procedure requirements

43004. (a) Any smoke testing procedures or smoke measuring equipment, including any meter that measures smoke opacity or density and any recorder that stores or records smoke opacity or density measurements, used to test for compliance with this article and regulations adopted pursuant to this article, shall produce consistent and repeatable results. The requirements of this subdivision shall be satisfied by the adoption of Society of Automotive Engineers recommended practice J 1667, "Snap-Acceleration Smoke Test Procedures for Heavy-Duty Diesel Powered Vehicles."

(b) The smoke test standards and procedures adopted and implemented pursuant to this article shall be designed to ensure that no engine will fail the smoke test standards and procedures when the engine is in good operating condition and is adjusted to the manufacturer's specifications.

(c) In implementing this article, the state board shall adopt regulations that ensure that there will be no false failures or that ensure that the state board will remedy any false failures without any penalty to the vehicle owner.

Comment. Section 43004 continues former Health and Safety Code Section 44011.6(c)-(d) without substantive change. The former paragraphs of Health and Safety Code Section 44011.6(d) have been redesignated as subdivisions (b) and (c).

1 **§ 43005. Smog check stations**

2 43005. The department may develop criteria for one or more classes of smog check
3 stations capable of determining compliance with regulations adopted pursuant to this
4 subdivision and may authorize those stations to issue certificates of compliance to vehicles
5 in compliance with the regulations. The department may contract for the operation of smog
6 check stations for heavy-duty motor vehicles pursuant to this section, and only heavy-duty
7 motor vehicles may be inspected at those stations.

8 **Comment.** Section 43005 continues former Health and Safety Code Section 44011.6(n)
9 without substantive change.

10 **§ 43006. Citations and required testing**

11 43006. The state board may issue a citation to the owner or operator for any vehicle in
12 violation of this article. The regulations may require the operator of a vehicle to submit to a
13 test procedure adopted pursuant to Section 43003 and this section, and may specify that
14 refusal to so submit is an admission constituting proof of a violation, and shall require that,
15 when a citation has been issued, the owner of a vehicle in violation of the regulations shall,
16 within 45 days, correct every deficiency specified in the citation.

17 **Comment.** Section 43006 continues former Health and Safety Code Section 44011.6(f)
18 without substantive change.

19 **§ 43007. Civil penalties**

20 43007. In addition to the corrective action required by this article, the owner of a motor
21 vehicle in violation of this article is subject to a civil penalty of not more than one thousand
22 five hundred dollars (\$1,500) per day for each day that the vehicle is in violation. The state
23 board may adopt a schedule of reduced civil penalties to be applied in cases where
24 violations are corrected in an expeditious manner. However, the schedule of reduced civil
25 penalties shall not apply where there have been repeated incidents of emissions control
26 system tampering. All civil penalties imposed pursuant to this section shall be collected by
27 the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the
28 Vehicle Inspection and Repair Fund, when appropriated by the Legislature, shall be
29 available to the state board and the Department of the California Highway Patrol for the
30 conduct of intermittent roadside inspections of heavy-duty motor vehicles pursuant to this
31 article.

32 **Comment.** Section 43007 continues former Health and Safety Code Section 44011.6(h)
33 without substantive change.

34 **§ 43008. Diesel Emission Reduction Fund**

35 43008. In addition to the corrective action required by Section 43006, and in addition to
36 the civil penalty imposed by Section 43007, the owner of a motor vehicle cited by the state
37 board pursuant to this article shall pay a civil penalty of three hundred dollars (\$300) per
38 citation; except that this penalty shall not apply to the first citation for any schoolbus. All
39 civil penalties imposed pursuant to this section shall be collected by the state board and
40 deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in
41 the Diesel Emission Reduction Fund, when appropriated by the Legislature, shall be
42 available to the State Energy Resources Conservation and Development Commission for
43 research, development, and demonstration programs undertaken pursuant to Section 25617
44 of the Public Resources Code.

1 **Comment.** Section 43008 continues former Health and Safety Code Section 44011.6(l)
2 without substantive change.

3 **§ 43009. Removal of vehicle from service**

4 43009. The state board shall inform the Department of the California Highway Patrol
5 whenever a vehicle owner cited pursuant to this article fails to take a required corrective
6 action or to pay a civil penalty levied pursuant to Sections 43007 and 43008 in a timely
7 manner. Following notice and opportunity for an administrative hearing pursuant to
8 subdivision (a) of Section 43010, the state board may request the Department of the
9 California Highway Patrol to remove the vehicle from service and order the vehicle to be
10 stored. Upon notification from the state board of payment of any civil penalties imposed
11 under Section 43007 and storage and related charges, the vehicle shall be released to the
12 owner or designee. Upon release of the vehicle, the owner or designee shall correct every
13 deficiency specified in any citation to that owner with respect to the vehicle.

14 **Comment.** Section 43009 continues former Health and Safety Code Section 44011.6(j)
15 without substantive change.

16 **§ 43010. Review and enforcement of civil penalties**

17 43010. (a) The state board shall adopt regulations that afford an owner cited under this
18 article an opportunity for an administrative hearing consistent with, but not limited to, all of
19 the following: (1) any owner cited under this article may request an administrative hearing
20 within 45 days following either personal receipt or certified mail receipt of the citation; (2)
21 if the owner fails to request an administrative hearing within 45 days, the citation shall be
22 deemed a final order and not subject to review by any court or agency; (3) if the owner
23 requests an administrative hearing and fails to seek review by administrative mandamus
24 pursuant to Section 1094.5 of the Code of Civil Procedure within 60 days after the mailing
25 of the administrative hearing decision, the decision shall be deemed a final order and not
26 subject to review by any other court or agency; and (4) the 45-day period may be extended
27 by the administrative hearing officer for good cause.

28 (b) Following exhaustion of the review procedures provided for in subdivision (a), the
29 state board may apply to the Superior Court of Sacramento County for a judgment in the
30 amount of the civil penalty. The application, which shall include a certified copy of the final
31 order of the administrative hearing officer, shall constitute a sufficient showing to warrant
32 the issuance of the judgment.

33 **Comment.** Section 43010 continues former Health and Safety Code Section 44011.6(m)-
34 (n) without substantive change.

35 **§ 43011. Report to Legislature**

36 43011. The state board, in consultation with the Department of the California Highway
37 Patrol, shall prepare and submit to the Legislature a report on the smoke emissions
38 enforcement program conducted under this article, including, but not limited to, its
39 assessment of the effectiveness of the program, the impact of the program on the operations
40 of the Department of the California Highway Patrol, and its recommendations for changes
41 in, alternatives to, or termination of, the program.

42 **Comment.** Section 43011 continues former Health and Safety Code Section 44011.6(k)
43 without substantive change.

Article 8. Self-Testing of Fleet Vehicles

§ 43050. Licensing fleet owners to test and maintain fleet vehicles

43050. Notwithstanding any other provision of this title, the department may license any registered owner of a fleet of 10 or more motor vehicles subject to this title, who so elects, to implement and conduct the tests and to perform necessary service and adjustment on the fleet's vehicles under this title, subject to all of the conditions stated in this article.

Comment. Section 43050 continues the first paragraph of former Health and Safety Code Section 44020 without substantive change.

§ 43051. Requirements

43051. The registered owner's facilities or personnel, or both, or a designated contractor of the registered owner, shall be licensed by the department as a fleet smog check station, and the test and repair system shall conform, in the department's determination, with all provisions of this title and all rules and regulations adopted by the department. The regulations shall provide for adequate onsite inspection by the department. Mobile testing equipment certified by the department may be used in accordance with procedures established by the department. The department may prohibit the use of mobile testing equipment if violations occur.

Comment. Section 43051 continues former Health and Safety Code Section 44020(a) without substantive change.

§ 43052. Suspension and revocation of license

43052. A license issued under this article is subject to Sections 43103, 43152, 44300, 44408 to 44410, inclusive, 44412, 44413, and 44415, and may be suspended or revoked by the department whenever the department determines, on the basis of random periodic spot checks of the owner's inspection system and fleet vehicles, that the system fails to conform or that certificates of compliance have been issued by the owner in violation of regulations adopted by the department.

Comment. Section 43052 continues the first sentence of former Health and Safety Code Section 44020(b) without substantive change.

§ 43053. Cooperation with department

43053. Any person licensed to conduct tests and service and adjustments under this article is deemed to have consented to provide the department with whatever access, information, and other cooperation the department reasonably determines are necessary to facilitate the random periodic spot checks.

Comment. Section 43053 continues the second sentence of former Health and Safety Code Section 44020(b) without substantive change.

§ 43054. Inspections

43054. The department or its contractor, on a random periodic basis, shall inspect or observe the inspections performed by licensed fleet smog check stations on not less than 2 percent of the total business fleet vehicles subject to this title.

Comment. Section 43054 continues former Health and Safety Code Section 44020(c) without substantive change.

1 **§ 43055. Certificates and cost limitations**

2 43055. (a) A fleet owner licensed to conduct tests or make repairs pursuant to this title
3 shall issue certificates of compliance for motor vehicles. The cost limits in Section 42953
4 and the economic hardship extension provisions in this title shall not apply to any motor
5 vehicle owned by a fleet owner licensed pursuant to this article.

6 (b) Notwithstanding subdivision (a), certificates of compliance or noncompliance
7 prepared solely for the disposal or sale of motor vehicles owned by a fleet owner licensed
8 pursuant to this article shall be subject to the cost limits in Section 42953.

9 **Comment.** Section 43055 continues former Health and Safety Code Section 44020(d)-(e)
10 without substantive change.

11 **§ 43056. License fees**

12 43056. The department shall establish initial and renewal license fees, which shall not
13 exceed the reasonable costs of administering this article.

14 **Comment.** Section 43056 continues former Health and Safety Code Section 44020(f)
15 without change.

16 **§ 43057. Vehicles for hire or high mileage vehicles**

17 43057. Notwithstanding any other provision of this article, fleets consisting of vehicles
18 for hire or vehicles which accumulate high mileage, as defined by the department, shall go
19 to a test-only station when a smog check certificate of compliance is required. Initially, high
20 mileage vehicles shall be defined as vehicles which accumulate 50,000 miles or more each
21 year. In addition, fleets which do not operate high mileage vehicles may be required to
22 obtain certificates of compliance from the test-only station if they fail to comply with this
23 title.

24 **Comment.** Section 43057 continues former Health and Safety Code Section 44020(g)
25 without change.

26 **§ 43058. Authority to require testing**

27 43058. Notwithstanding any other provision of this title, the department shall have the
28 authority, by regulation, to require testing of vehicle fleets consistent with regulations
29 adopted by the Environmental Protection Agency, if necessary to meet the emission
30 reduction performance standard established by the agency, as determined by the
31 department.

32 **Comment.** Section 43058 continues former Health and Safety Code Section 44020(h)
33 without change.

34 **CHAPTER 6. QUALITY ASSURANCE**

35 **Article 1. General Provisions**

36 **§ 43100. Contracts with private entities**

37 43100. The consumer protection-oriented quality assurance portion of the program may
38 be conducted by one or more private entities pursuant to contracts with the department.

39 **Comment.** Section 43100 continues former Health and Safety Code Section 44014(e)
40 without change.

1 **§ 43101. Contracts for provision of training and retraining courses**

2 43101. The department may contract to ensure the availability of training and retraining
3 courses required by this title whenever these courses are not otherwise available. Charges
4 for courses offered by contractors pursuant to this section shall be borne by course
5 attendees.

6 **Comment.** Section 43101 continues former Health and Safety Code Section 44045.6(d)
7 without substantive change.

8 **§ 43102. Inspections**

9 43102. The quality assurance portion shall provide for inspections of licensed smog
10 check stations, data collection and forwarding, equipment accuracy checks, operation of
11 referee stations, and other necessary functions. If the services are contracted for pursuant to
12 Section 43100, the department shall prepare detailed specifications and solicit bids from
13 private entities for the implementation of the quality assurance functions.

14 **Comment.** Section 43102 continues former Health and Safety Code Section 44036(d)
15 without substantive change.

16 **§ 43103. Access for inspection purposes**

17 43103. The department or its representatives, including quality assurance inspectors,
18 shall be provided access to licensed stations for the purpose of examining property, station
19 equipment, repair orders, emissions equipment maintenance records, and any emission
20 inspection items, as defined by the department.

21 **Comment.** Section 43103 continues former Health and Safety Code Section 44035(b)
22 without change.

23 **§ 43104. Consistency, uniformity, and availability of referees**

24 43104. The consumer protection-oriented quality assurance portion of the motor vehicle
25 inspection program shall ensure uniform and consistent tests and repairs by all qualified
26 smog check technicians and licensed smog check stations throughout the state, and shall
27 include a number of stations providing referee functions available to consumers.

28 **Comment.** Section 43104 continues former Health and Safety Code Section 44036(a)
29 without change.

30 Article 2. Licensing Generally

31 **§ 43150. Licensing and qualification required**

32 43150. No person shall perform, for compensation, tests or repairs of emission control
33 devices or systems of motor vehicles required by this title unless the person performing the
34 test or repair is a qualified smog check technician and the test or repair is performed at a
35 licensed smog check station. Qualified technicians shall perform tests of emission control
36 devices and systems in accordance with Section 42751.

37 **Comment.** Section 43150 continues former Health and Safety Code Section 44032 without
38 substantive change.

1 **§ 43151. License fees**

2 43151. Annual license fees for smog check stations and biennial license fees for smog
3 check technicians shall be imposed by the department, but shall not exceed the reasonable
4 cost of administering the qualifications and licensing program.

5 **Comment.** Section 43151 continues former Health and Safety Code Section 44034 without
6 change.

7 **§ 43152. Suspension and revocation of license or qualification**

8 43152. A smog check station's license or a qualified smog check technician's
9 qualification may be suspended or revoked by the department, after a hearing, for failure to
10 meet or maintain the standards prescribed for qualification, equipment, performance, or
11 conduct. The department shall adopt rules and regulations governing the suspension,
12 revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

13 **Comment.** Section 43152 continues former Health and Safety Code Section 44035(a)
14 without change.

15 Article 3. Smog Check Stations

16 **§ 43200. Standards for licensing of smog check stations**

17 43200. (a) The department shall develop standards for the licensing of smog check
18 stations. Tests, service, and adjustment at smog check stations shall be performed by a
19 qualified smog check mechanic.

20 (b) The licensing standards for smog check stations may include, but are not limited to,
21 requirements for all of the following:

22 (1) Use of computerized and tamper-resistant testing equipment, including, but not
23 limited to, test analyzer systems meeting the current requirements of the department.

24 (2) Annual license renewal.

25 (3) Onsite availability of current emission control system information and service and
26 adjustment procedures.

27 **Comment.** Section 43200 continues former Health and Safety Code Section 44030 without
28 change.

29 **§ 43201. Licensing of smog check stations**

30 43201. (a)(1) Any facility meeting the requirements established by the department
31 pursuant to this title may be licensed as a test-only, test and repair, or repair-only smog
32 check station. A licensed smog check station shall display an identifying sign prescribed by
33 the department in a manner conspicuous to the public.

34 (2) A licensed smog check station certified pursuant to Section 42754 shall display an
35 identifying sign prescribed by the department.

36 (b) No licensed or certified smog check station shall require, as a condition of performing
37 the test, that any needed repairs or adjustment be done by the person, or at the facility of the
38 person, performing the test.

39 (c) If a motor vehicle, including a commercial vehicle, is tested at a facility licensed to
40 perform tests and repairs pursuant to this title, the facility shall provide the customer with a
41 written estimate pursuant to Section 9884.9 of the Business and Professions Code. The
42 written estimate shall contain a notice to the customer stating that the customer may choose
43 another smog check station to perform needed repairs, installations, adjustments, or
44 subsequent tests.

(d) Charges for testing or repair, or both, shall be separately stated.

(e) The department shall require the posting of station licenses and qualified technicians' certificates prominently in each place of business so as to be readily visible to the public.

Comment. Section 43201 continues former Health and Safety Code Section 44033 without substantive change.

Article 4. Smog Check Technicians

§ 43250. Ability to perform required tasks

43250. The department shall not license any technician unless the department has determined that the person is able to perform the inspection, testing, and repair tasks required under the program on all vehicles subject to the program, except that the department may limit this requirement to specified makes or models of vehicles if a technician requests licensing limited to specified makes or models of vehicles.

Comment. Section 43250 continues former Health and Safety Code Section 44045.5(b) without substantive change.

§ 43251. Qualification required

43251. No smog check technician may perform tests or make repairs required by this title, for compensation, unless qualified by the department for the class and category of vehicle being tested or repaired. To qualify, smog check technicians shall pass a qualification test administered by the department, in addition to meeting prerequisite minimum experience and training criteria established by the department, pursuant to Section 43252. Passage of the qualification test shall, and training may, also be required upon each biennial renewal of the smog check technician's license.

Comment. Section 43251 continues former Health and Safety Code Section 44031.5(a) without substantive change.

§ 43252. Qualifications

43252. This section describes the qualifications to be met by smog check technician applicants. The department shall, by regulation, establish requirements for the licensure of smog check technicians which are necessary to enable the program to meet the applicable emission reduction performance standards, to include, at a minimum:

(a) Either of the following:

(1) Certification standards for all technicians in the program which are equivalent or superior to the standards applicable for certification by an established national certification or accrediting institution to perform service on automotive engines and electrical systems.

(2) Successful completion of a training program certified by the department under Section 43301.

(b) In addition to the requirement in subdivision (a), a minimum of two years' experience performing repairs to motor vehicle emission control systems or experience approved by the department, or an associate degree in an automotive technology curriculum or an equivalent degree as determined by the department.

(c) An examination process that effectively determines whether applicants are all of the following:

(1) Knowledgeable regarding the visual, functional, and exhaust and evaporative emissions inspection and testing procedures specified by the department, including a

demonstrated understanding of loaded mode testing principles, purpose, procedures and equipment.

(2) Knowledgeable regarding misfire detection, air injection testing, closed-loop system testing, and generic idle adjustment procedures specified by the department.

(3) Capable of using emissions manuals and tune-up labels to properly identify required emission control systems and components on any vehicle subject to the enhanced program.

(d) The examination shall use state-of-the-art technology, which may include computer simulations or other computer-based examination formats to determine whether applicants can properly identify, diagnose, and repair emission-related problems. The department may contract for the development and administration of this examination.

Comment. Section 43252 continues former Health and Safety Code Section 44045.5(a) without substantive change. The reference in the first paragraph to the date on which the qualifications applied (January 1, 1995) is obsolete and has not been continued. The reference in subdivision (d) to the date after which state-of-the-art technology is required (July 1, 1995) is obsolete and has not been continued.

§ 43253. Training and periodic retraining

43253. (a) The department shall prescribe training and periodic retraining courses for licensed smog check technicians pursuant to Sections 43255 and 43301.

(b) Smog check technicians shall have the option to do hands-on work in lieu of written work in order to successfully complete the department certified training and retraining courses.

(c) The institution administering the department certified training or retraining courses shall issue a certificate of completion to each person who successfully completes the certified courses. The certificate shall be valid for one year.

Comment. Section 43253 continues former Health and Safety Code Section 44031.5(b) & (d)-(e) without substantive change.

§ 43254. Retraining of technician determined to be unqualified

43254. Whenever the department determines, through investigation, that a previously qualified smog check technician may lack the skills to reliably and accurately perform the test or repair functions within the required qualification, the department may prescribe for the technician one or more retraining courses which have been certified by the department. The smog check technician may request and be granted a hearing, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, on the department's determination. The request for a hearing shall be submitted within 30 days of the department's notification of its determination. A failure to complete the prescribed retraining course within the time designated by the department, or to request a hearing within 30 days of the department's notification of its determination, shall result in loss of qualification. Upon a later completion of the prescribed department certified retraining course, the department may reinstate the smog check technician's qualification.

Comment. Section 43254 continues former Health and Safety Code Section 44031.5(c) without change.

§ 43255. Remedial training of technician determined to be unqualified

43255. The department may require remedial training at a certified training facility or may take disciplinary action, whichever the department determines to be the most appropriate, for any licensed technician who the department determines cannot perform inspections,

1 testing, or repairs as required under the program. The failure to complete the remedial
2 training when required by the department shall be a ground for revocation or suspension of
3 a smog check technician's license under Section 44407.

4 **Comment.** Section 43255 continues former Health and Safety Code Section 44045.6(c)
5 without substantive change.

6 **§ 43256. Examination fees**

7 43256. The department may impose an examination fee, sufficient to recover the
8 reasonable cost of administering, developing, and updating the examination, for initial and
9 biennial renewal smog check technician applicants. Payment of the fee entitles the applicant
10 to be scheduled for an examination. The department may contract for collection of the fee.

11 **Comment.** Section 43256 continues former Health and Safety Code Section 44034.1
12 without change.

13 **§ 43257. Licensure categories**

14 43257. The department may establish more than one category or level of licensure, and
15 may provide for the licensing of interns or trainees if those persons do all of their test and
16 repair work under the supervision of a licensed technician.

17 **Comment.** Section 43257 continues former Health and Safety Code Section 44045.5(c)
18 without substantive change.

19 **§ 43258. License renewal**

20 43258. The department shall require the renewal of smog check technician licenses every
21 two years, and shall establish any necessary and appropriate requirements for renewal.

22 **Comment.** Section 43258 continues former Health and Safety Code Section 44045.5(d)
23 without substantive change.

24 **§ 43259. Photo identification**

25 43259. The department may, by regulation, establish procedures relating to the issuance
26 and use of photo identification cards for licensed technicians.

27 **Comment.** Section 43259 continues former Health and Safety Code Section 44031.5(f)
28 without change.

29 **Article 5. Smog Check Training Institutions**

30 **§ 43300. Standards**

31 43300. (a) The department shall develop standards for certification of institutions and
32 instructors for purposes of providing training of smog check mechanics. The standards
33 shall include criteria for applications, manuals, textbooks, laboratory equipment, laboratory
34 exercises, hands-on work, examinations, and other matters the department determines
35 necessary for a certified course of instruction.

36 (b) The standards shall also specify the conditions under which an institution or
37 instructor may be decertified, and under which a decertified institution or instructor may
38 regain certification.

39 **Comment.** Section 43300 continues former Health and Safety Code Section 44030.5
40 without substantive change. The former unnumbered paragraphs have been designated as
41 subdivisions.

1 **§ 43301. Certification requirements**

2 43301. (a) The department shall, by regulation, establish requirements for the training of
3 smog check technicians which are necessary to enable the program to meet the applicable
4 emission reduction performance standards, to include, at a minimum, all of the following:

5 (1) Criteria for facilities, instructors, equipment, reference materials, and instructional
6 materials.

7 (2) A detailed outline of lectures and laboratory work.

8 (3) A final examination and recommended passing score.

9 (4) In lieu of the requirements in paragraphs (1) to (3), inclusive, the department may
10 accept certification by an established national training institution of training in relevant
11 curricula, including electrical systems, engine performance, and electronic emissions
12 diagnostics.

13 (b) Training facilities meeting the requirements of subdivision (a) shall be certified by the
14 department to provide smog check training.

15 **Comment.** Section 43301 continues former Health and Safety Code Section 44045.6(a)-
16 (b) without change.

17 Article 6. Equipment and Replacement Parts

18 **§ 43350. Equipment and replacement parts**

19 43350. All licensed smog check stations shall utilize original equipment and replacement
20 parts that are certified by the department. The department shall charge a fee for certification
21 testing of the equipment or the replacement parts. The fee for certification testing of
22 equipment shall be fixed by the department based upon its actual costs of certification
23 testing, shall be calculated from the time that the equipment is submitted for certification
24 testing until the time that the certification testing is complete, and shall not exceed ten
25 thousand dollars (\$10,000). The fee for certification testing of replacement parts shall be
26 determined by the department based upon its actual costs of certification testing, shall be
27 calculated from the time that the replacement part is submitted for certification testing until
28 the time that the certification testing is complete, and shall not exceed two thousand five
29 hundred dollars (\$2,500). The department shall adopt, and may revise, standards for
30 certification and decertification of the equipment, which may include a device for testing of
31 emissions of oxides of nitrogen. As expeditiously as possible, the department shall adopt
32 equipment standards that include a test analyzer system containing all of the following:

33 (a) A microprocessor to control test sequencing, selection of proper test standards, the
34 automatic pass or fail decision, and the format for the test report and the recorded data file.
35 The microprocessor shall be capable of using a standardized programming language
36 specified by the department.

37 (b) An exhaust gas analysis portion with an analyzer for hydrocarbons, carbon
38 monoxide, and carbon dioxide that is designed to accommodate an optional oxides of
39 nitrogen analyzer. An oxides of nitrogen analyzer shall be required in the enhanced
40 program areas.

41 (c) Equipment necessary to perform visual and functional tests of emission control
42 devices required by the department.

43 (d) A device to accept and record motor vehicle identification information, including a
44 device capable of reading bar code information pursuant to regulations of the state board.
45 The device shall have the ability to identify, with the cooperation of the Department of
46 Motor Vehicles, smog inspections performed on vehicles sold by used car dealers.

(e) A device to provide a printed record of the test process and diagnostic information for the motorist.

(f) A mass storage device capable of storing not less than the minimum amount of program software and data specified by the department.

(g) A device to provide for the periodic modification of all program and data files contained on the mass storage device, using a standardized form of removable media conforming to specifications of the department.

(h) A device that provides for the storage of test records on a standardized form of removable media conforming to specifications of the department.

(i) One or more communications ports conforming to the specifications established by the department as necessary to provide real time communication, or communication that is consistent with maintaining a superior quality assurance program and efficient information transfer, between the test equipment and the centralized computer data base through the computer network maintained by the department pursuant to Sections 43500.

(j) An interface capable of monitoring equipment used with loaded mode testing, idle testing, on board diagnostic testing, or other tests prescribed by the department.

(k) Any other features that the department determines are necessary to increase the effectiveness of the program, including, but not limited to, a loaded mode dynamometer for purposes of oxides of nitrogen detection, and other equipment necessary to detect nonexhaust-related volatile organic compound emissions, such as found in fuel system evaporative emissions and crankcase ventilation emissions.

Comment. Section 43350 continues former Health and Safety Code Section 44036(b) without substantive change.

§ 43351. Application of equipment requirements

43351. The department shall require all smog check stations to use equipment meeting the requirements of Section 43350. However, the department may defer the requirement for any equipment, external to the chassis of the test analyzer system, needed to read bar code information, until a substantial portion of the vehicles subject to this title are equipped with bar code labels. Prior to the imposition of a requirement for equipment meeting the requirements of Section 43350, every smog check station shall use equipment meeting the specifications of the department in effect on January 1, 1988.

Comment. Section 43351 continues former Health and Safety Code Section 44036(c) without change. The reference to the date by which the equipment requirement applied (January 1, 1996) is obsolete and has not been continued.

§ 43352. Revision of equipment specifications

43352. The department may revise the specifications for equipment annually if the cost thereof is less than 20 percent of the total system cost. A more comprehensive revision to the specifications may be required not more often than every five years.

Comment. Section 43352 continues former Health and Safety Code Section 44036(e) without change.

§ 43353. Equipment software updates

43353. (a) Equipment manufacturers shall furnish to the department, and shall install, software updates as specified by the department. The department shall allow equipment manufacturers six months, from the date the department issues its proposed specifications for periodic software updates, to obtain department approval that the updates meet the

1 proposed specifications and to install the updates in all equipment subject to the updates.
2 During the first 30 days of the six-month period, the manufacturers shall be permitted to
3 review and to comment upon the proposed specifications. However, notwithstanding any
4 other provision of Sections 43102, 43104, and 43350 to 43353, inclusive, the department
5 may order manufacturers to install software changes in a shorter period of time upon a
6 finding by the department that a previously installed update does not meet current
7 specifications. A manufacturer's failure to furnish or install software updates as so
8 specified is cause for the department to decertify the manufacturer's test analyzer system or
9 to issue a citation to the manufacturer. The citation shall specify the nature of the violation
10 and may specify a civil penalty not to exceed one thousand dollars (\$1,000) for each day
11 the manufacturer fails to furnish or install the specified software updates by the specified
12 period. In assessing a civil penalty pursuant to this section, the department shall give due
13 consideration, in determining the appropriateness of the amount of the civil penalty, to
14 factors such as the gravity of the violation, the good faith of the manufacturer, and the
15 history of previous violations.

16 (b) The citations shall be served pursuant to subdivision (c) of Section 11505 of the
17 Government Code. The manufacturer may request a hearing in accordance with Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
19 Code. A request for a hearing shall be submitted in writing within 30 days of service of the
20 citation, and shall be delivered to the office of the department in Sacramento. Hearings and
21 related procedures under this section shall be conducted in the same manner as proceedings
22 for adjudication of an accusation under that Chapter 5, except as otherwise specified in this
23 chapter.

24 (c) If within 30 days from the date of service of the citation, the manufacturer fails to
25 request a hearing, the citation shall be deemed the final order of the department.

26 (d) Any failure to comply with the final order of the department for payment of a civil
27 penalty, or to pay the amount specified in any settlement executed by the licensee and the
28 Director of Consumer Affairs, is cause for decertification of the manufacturer's test
29 analyzer system.

30 **Comment.** Section 43353 continues former Health and Safety Code Section 44036(f)
31 without substantive change.

32 **§ 43354. Proof of financial security of equipment manufacturers**

33 43354. The department may require that equipment manufacturers, submitting equipment
34 for certification pursuant to Sections 43350, submit proof of financial security, including,
35 but not limited to, insurance sufficient to cover product liability claims, and secured funds
36 for prepaid warranty or service contracts.

37 **Comment.** Section 43354 continues former Health and Safety Code Section 44036.1
38 without substantive change.

39 **§ 43355. Test analyzer system (TAS) calibration gases**

40 43355. (a) The department shall set standards for test analyzer system (TAS) calibration
41 gases and shall establish criteria to certify and decertify gas blenders who blend, fill, or sell
42 TAS calibration gases.

43 (b) No person shall blend, fill, or sell any TAS calibration gases unless certified by the
44 department and no person shall use in a TAS calibration gases which are not certified.

45 **Comment.** Section 43355 continues former Health and Safety Code Section 44036.5
46 without substantive change. The reference in subdivision (b) to the date after which the

1 prohibition stated in that subdivision applied (January 1, 1990) is obsolete and has not been
2 continued.

3 Article 7. Emission Control System Service Information

4 § 43400. Required service information

5 43400. To ensure uniform and consistent inspection, tests, and repairs by all qualified
6 smog check technicians and licensed smog check stations, and to ensure consumer
7 protection, manufacturers of motor vehicles shall provide, or cause to be provided, all
8 emission control system service information that is necessary to properly inspect, test and
9 repair those vehicles. Unless otherwise provided, that information shall be required for all
10 1980 and newer model year vehicles and shall consist of all of the following:

- 11 (a) General specifications showing the make, model, and classification of the vehicle.
- 12 (b) The identification, location, and description of all emission control equipment on the
13 vehicle.
- 14 (c) The manufacturer's recommended visual and functional inspection procedures for
15 each emissions-related component.
- 16 (d) Air injection and evaporative emission purge strategies.
- 17 (e) All vehicle manufacturer-specific data stream information, excluding bidirectional
18 control information and reprogramming information unless required by state or federal
19 statute or regulation.

20 **Comment.** Section 43400 continues former Health and Safety Code Section 44036.2(a)
21 without substantive change.

22 § 43401. Information format and distribution

23 43401. The service information shall be made compatible with computer systems
24 commonly used in the aftermarket repair industry. In addition, the vendor or intermediary
25 may offer the information by other common distribution means when electronic means are
26 unavailable. No information or format will be required in the service information beyond
27 that which is provided by new car manufacturers to franchise dealers.

28 **Comment.** Section 43401 continues former Health and Safety Code Section 44036.2(f)(2)
29 without substantive change.

30 § 43402. Electronic format

31 43402. Beginning with the 1998 model year, all emissions-related information required
32 by this article, including diagnostic, service, and training information supplied by vehicle
33 manufacturers to any franchised dealer, shall be provided in an electronic format that is
34 readily accessible, or that can be made readily accessible, to private diagnostic assistance
35 service information vendors or intermediaries, if that information is provided or made
36 available in this format by manufacturers to dealers. In determining the allowable format,
37 the state board shall ensure compatibility with any service information format requirements
38 specified by the Environmental Protection Agency.

39 **Comment.** Section 43402 continues former Health and Safety Code Section 44036.2(b)
40 without substantive change.

41 § 43403. Provision of service information as condition of certification

42 43403. (a) The state board shall require motor vehicle manufacturers to provide the
43 service information necessary to comply with this article as a condition of certification.

(b) Should the manufacturer fail to provide the service information necessary to comply with Section 43400 for any vehicle within an engine family within one year of its retail introduction, the state board may withhold certification for all engine families for subsequent model years, until the manufacturer provides the necessary service information.

(c) The department shall periodically conduct surveys to determine whether the service information and tool requirements imposed by federal and state law are being fulfilled by actual field availability of the information and tools.

Comment. Section 43403 continues former Health and Safety Code Section 44036.2(c) without substantive change.

§ 43404. Computer program version data

43404. (a) The manufacturer shall make accessible, through the vehicle's standard data link, the version number or Part number of the vehicle's current computer memory program to allow smog check technicians to determine if the manufacturer's most up-to-date program is installed in the vehicle's computer. This requirement shall apply to all vehicles with reprogrammable computer memory in the vehicle's computer beginning with the 1999 model year. Until the manufacturer provides an electronic computer program identifier system, the manufacturer shall use a mechanical identification system to identify the computer's current program.

(b) Manufacturers that do not use reprogrammable technology for the vehicle's computer shall use either a mechanical or electronic identification system to identify the current program of the vehicle's computer.

(c) The manufacturer shall also provide or cause to be provided an engine family reprogramming cross-reference to aid smog check technicians in determining the proper computer memory program for that engine. The cross-reference shall either be published by the manufacturer or made available to private diagnostic service information vendors or intermediaries for compilation and distribution.

Comment. Section 43404 continues former Health and Safety Code Section 44036.2(d)-(e) without substantive change.

§ 43405. Limitation on required service information

43405. The information required to be provided under this article shall be limited to only that information which is made available by manufacturers to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines needed to make use of the emissions control diagnostic system prescribed under Section 207 of the Federal Clean Air Act Amendments of 1990 and other information including instructions for making emission-related diagnosis and repairs. If any of the emissions-related service information required by this article is provided to the manufacturer's franchised dealers in advance of the specific requirements of this article, that information shall also be made available by manufacturers, directly or indirectly, to smog check stations and repair technicians. Manufacturers shall only be required to provide information to vendors or intermediaries in the same manner and format as provided to franchised dealers.

Comment. Section 43405 continues former Health and Safety Code Section 44036.2(f)(1) without substantive change.

1 **§ 43406. Application of article to 1994 and newer model years**

2 43406. The provisions of this article that apply with respect to 1994 and newer model
3 year vehicles shall become inoperative if the state board determines that the Environmental
4 Protection Agency has adopted rules relative to the provision of emissions-related service
5 information for 1994 and newer model year vehicles.

6 **Comment.** Section 43406 continues former Health and Safety Code Section 44036.2(g)
7 without substantive change.

8 ☞ **Staff Note.** The staff would like to receive input on whether the contingency stated in
9 this section has been satisfied.

10 Article 8. Data Collection and Use

11 **§ 43450. Private information providers**

12 43450. (a) The department shall direct licensed smog check stations and technicians to
13 private diagnostic assistance service information vendors or intermediaries who possess the
14 electronically formatted information acquired under Article 7 (commencing with Section
15 43400), or with any other emissions-related information needed to improve the
16 effectiveness of smog checks.

17 (b) The provisions of this section that apply with respect to 1994 and newer model year
18 vehicles shall become inoperative if the state board determines that the Environmental
19 Protection Agency has adopted rules relative to the provision of emissions-related service
20 information for 1994 and newer model year vehicles.

21 **Comment.** Section 43450 continues former Health and Safety Code Section 44036.3
22 without substantive change.

23 ☞ **Staff Note. (1)** The staff would like to receive input on whether the contingency stated
24 in subdivision (b) has been satisfied.

25 **(2)** Subdivision (b) limits application of the section with respect to 1994 and newer model
26 year vehicles. However, it isn't clear that any provisions of the section "apply" to vehicles,
27 whatever the model year. The section governs smog check stations and technicians.
28 Subdivision (b) may be superfluous. The staff would like to receive input on this point.

29 **§ 43451. Use of smog check data in appeal of citation**

30 43451. The data collected by the equipment used by a smog check station, as required by
31 regulations of the bureau, may be used by a licensed smog check station technician or
32 operator when appealing a citation issued by the bureau.

33 **Comment.** Section 43451 continues former Health and Safety Code Section 44036.8
34 without change.

35 **§ 43452. Compilation and maintenance of records**

36 43452. (a) The department shall compile and maintain records, using the sampling
37 methodology necessary to ensure their scientific validity and reliability, of tests and repairs
38 performed by qualified smog check technicians at licensed smog check stations pursuant to
39 this title on all of the following information:

40 (1) The motor vehicle identification information and the test data collected at the station.

41 (2) The number of maintenance and repair operations performed on motor vehicles which
42 fail to pass a test conducted pursuant to this title.

(3) The correlation between maintenance and repairs recommended by the department pursuant to Section 42503 and maintenance and repairs performed.

(4) The charges assessed for the service and repairs and the correlation between the amount charged for repairs and the amount of emission reduction.

(5) Data received and compiled through the use of the centralized computer data base and computer network to be established pursuant to Sections 43500, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions.

(6) The frequency of specific smog check stations which issue a passing certificate for vehicles which have failed a previous inspection at other smog check stations within the preceding 30 days.

(b) A written summary of the information specified in subdivision (a) shall be available annually for the technicians and smog check stations in each district and to the public upon request.

Comment. Section 43452 continues former Health and Safety Code Section 44037 without substantive change.

§ 43453. Transmission of data to the department

43453. Until implementation of the centralized computer data base required pursuant to Section 43500, each smog check station shall transmit vehicle data and emission test or repair results to the department and transmit to the department vehicle data and emission measurements made before and after repair. The department shall establish, by regulation, the form, manner, and frequency of those data transmittals.

Comment. Section 43453 continues former Health and Safety Code Section 44038 without substantive change.

§ 43454. Written summary of required information

43454. A written summary of the required information applicable to smog check stations in each district shall be published semiannually by the department and made available upon request to the owner of any motor vehicle subject to this title.

Comment. Section 43454 continues former Health and Safety Code Section 44039 without substantive change.

§ 43455. Use of bar codes in certificates and waivers

43455. The department may require certificates of compliance, certificates of noncompliance, and repair cost waivers to contain a unique number encoded in bar code. These certificates may be sold to licensed smog check stations by the department, printed by test analyzer systems, or transmitted by electronic means. The department, with the cooperation of the Department of Motor Vehicles, shall periodically check certificates to determine their validity.

Comment. Section 43455 continues former Health and Safety Code Section 44040 without change.

§ 43456. Use of bar codes in documents provided to vehicle owner on registration

43456. In order to expedite emissions testing and to eliminate errors in the transcription of vehicle data, the department shall, in cooperation with the Department of Motor Vehicles, furnish bar code labels or bar coded documents to all vehicle owners at the time of their vehicle's annual registration renewal. The labels or documents shall contain vehicle

1 identification numbers and other vehicle-specific information, to be determined by the
2 department, which can be recorded by smog check station technicians utilizing the scanning
3 devices required by Section 42450.

4 **Comment.** Section 43456 continues former Health and Safety Code Section 44041 without
5 substantive change.

6 Article 9. Centralized Computer System

7 § 43500. Establishment of computer system

8 43500. (a) On or before January 1, 1995, the department shall design and establish the
9 equipment necessary to operate a centralized computer data base and computer network that
10 is readily accessible by all licensed smog check technicians on a real time basis.

11 (b) The centralized computer data base and network shall be designed with all of the
12 following capabilities:

13 (1) To provide smog check technicians with immediate access to vehicle-specific
14 information regarding the location of all emission control equipment, pattern failure data,
15 and other vehicle-specific technical information relevant to the efficient identification,
16 diagnosis, and repair of emission problems.

17 (2) To provide smog check technicians and the department with information as to the date
18 and result of prior smog check tests performed on each vehicle to discourage vehicle
19 owners from shopping for certificates of compliance and to permit the department to
20 identify smog check stations for further investigation as potential violators of this title.

21 (3) To provide the department with data on the failure rates and repair effectiveness for
22 vehicles of each make and model year on a statewide basis, and by smog check station and
23 technician, to facilitate identification of smog check stations and technicians as potential
24 violators of this title.

25 (4) Upon a determination that a smog check station or technician has engaged in a pattern
26 of conduct violating this title, or that a vehicle failed one or more emissions tests before
27 obtaining a certificate of compliance, to provide the information necessary to identify and
28 contact vehicle owners who obtained certificates from the station or technician, or may have
29 obtained certificates of compliance in violation of this title, for purposes of requiring the
30 retesting of their vehicles.

31 (5) To be compatible with the eventual transition to a fully computerized smog
32 certification program that will not require the use of printed certificates as evidence of
33 compliance.

34 (6) To be compatible with bar code scanning of vehicles as provided in Section 43456.

35 (7) To permit ongoing entry of information from each smog check station into the
36 centralized data base to enlarge and improve the data base on a continuous basis.

37 (8) To be compatible with the department's recordkeeping and compilation requirements
38 established by Section 43452.

39 (9) To meet the needs of a remote-sensing program to identify gross polluters, as
40 specified by the department.

41 (10) To meet any other needs specified by the department to enhance the benefits of the
42 program through the storage of vehicle-specific information, such as that pertaining to
43 voluntary repair and assistance and retirement programs and to the referee station program.

44 **Comment.** Section 43500 continues former Health and Safety Code Section 44037.1(a)-
45 (b) without substantive change.

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

5 **§ 43501. Electronic data transmission**

6 43501. Each smog check station shall transmit vehicle data emission test results to the
7 department's centralized data base. Each smog check station shall also transmit vehicle data
8 and emission measurements made before and after repair. The department shall establish,
9 by regulation, the form, manner, and frequency of the data transmittals.

10 **Comment.** Section 43501 continues former Health and Safety Code Section 44037.1(c)
11 without change. The reference to the date after which the requirements of this section applied
12 (January 1, 1995) is obsolete and has not been continued.

13 **§ 43502. Electronic transmittal fee**

14 43502. The department may, for each transmittal of data to the centralized data base,
15 charge a licensed smog check station a transaction fee established by the department. The
16 transaction fee shall be sufficient to cover the actual costs of operating and maintaining the
17 current data base and network.

18 **Comment.** Section 43502 continues former Health and Safety Code Section 44037.2(b)
19 without substantive change.

20 **§ 43503. Contracts for operation of centralized computer data base**

21 43503. (a) The department may enter into a contract for telecommunication,
22 programming, data analysis, data processing, and other services necessary to operate and
23 maintain the centralized computer data base and computer network specified in Section
24 43500.

25 (b) Any contract made pursuant to this section may authorize compensation to the
26 contractor from the transaction fees established by the department. The contractor shall
27 maintain the transaction fees, which may be collected directly by the contractor from the
28 licensed smog check stations, in a separate custodial account that the contractor shall
29 account for and manage in accordance with generally accepted accounting standards and
30 principles.

31 **Comment.** Section 43503 continues former Health and Safety Code Section 44037.2(a) &
32 (c) without substantive change.

33 CHAPTER 7. GROSS POLLUTERS

34 Article 1. General Provisions

35 **§ 43600. Legislative findings and declarations**

36 43600. The Legislature finds and declares as follows:

37 (a) California's air is the most polluted in the nation and the largest source of that
38 pollution is automobiles.

39 (b) California has the most stringent new car emission standards in the nation as well as a
40 vehicle inspection (smog check) program that result in most cars producing very little
41 pollution.

1 (c) A small percentage of automobiles cause a disproportionate and significant amount of
2 the air pollution in California.

3 (d) These gross polluters are primarily vehicles in which the emission control equipment
4 has been disconnected or which are very poorly maintained.

5 (e) New technologies, such as remote sensing, can identify gross polluters on the roads,
6 enabling law enforcement authorities to stop, inspect, and cite vehicles with disconnected
7 emission control equipment, and can promote the development of incentives for the repair
8 of other high-emitting vehicles.

9 (f) Requiring owners to reconnect emission control equipment and developing incentives
10 for needed maintenance on high-emitting vehicles may be cost-effective methods to reduce
11 emissions and help achieve air quality standards in many districts.

12 **Comment.** Section 43600 continues former Health and Safety Code Section 44080 without
13 change.

14 **§ 43601. Authority to establish other programs**

15 43601. In addition to other programs authorized in this chapter, a district may establish
16 programs to identify gross polluters and other high-emitting vehicles whose emissions
17 could be reduced by repair, using remote sensors or other methods, and to provide
18 financial incentives to encourage the repair or scrapping of these vehicles as a method of
19 reducing mobile source emissions for the purposes of Section 33251. The programs
20 authorized by this section are not intended to impose additional emission reduction
21 requirements, but instead are intended to provide more cost-effective alternative methods to
22 meet existing requirements.

23 **Comment.** Section 43601 continues former Health and Safety Code Section 44084 without
24 substantive change. The reference in former Health and Safety Code Section 44084 to the
25 date after which a district may establish a program under this section (March 1, 1993) is
26 obsolete and has not been continued.

27 **§ 43602. Cost-effectiveness of programs**

28 43602. Each district shall, in establishing, reviewing, or updating the plan required by
29 Chapter 3 (commencing with Section 33200) of Title 2 of Part 3, consider the relative cost-
30 effectiveness of the programs authorized in this chapter compared to other control measures
31 under consideration.

32 **Comment.** Section 43602 continues former Health and Safety Code Section 44086 without
33 substantive change.

34 **§ 43603. Marketable emission reduction credits**

35 43603. Districts may establish procedures to generate marketable emission reduction
36 credits from programs established pursuant to Section 43601. Emission reduction credits
37 generated pursuant to this section may be used to meet or offset transportation control
38 requirements, average vehicle ridership reductions, or other mobile source emission
39 requirements, as determined by the district.

40 **Comment.** Section 43603 continues former Health and Safety Code Section 44085 without
41 substantive change.

Article 2. Identification and Repair of Gross Polluting Vehicles

§ 43650. Identification of gross polluting vehicles

43650. (a) The department, in cooperation with the state board, shall institute procedures for auditing the emissions of vehicles while actually being driven on the streets and highways of the state. The department may undertake those procedures itself or seek a qualified vendor of these services. The primary object of the procedures shall be the detection of gross polluters. The procedures shall consist of techniques and technologies determined to be effective for that purpose by the department, including, but not limited to, remote sensing. The procedures may include pullovers for roadside emissions testing and inspection. The department shall consider the recommendations of the review committee based on the outcome of the pilot demonstration program conducted pursuant to Article 3 (commencing with Section 43700).

(b) The department may additionally use other methods to identify gross polluting vehicles for out-of-cycle testing and repair.

Comment. Section 43650 continues former Health and Safety Code Section 44081(a) without substantive change.

§ 43651. Out-of-cycle testing and repair

43651. The department shall, by regulation, establish a program for the out-of-cycle testing and repair of motor vehicles found, through roadside auditing, to be emitting at levels that exceed specified standards. The program shall include all of the following elements:

(a) Emission standards, and test and inspection procedures and regulations, adopted in coordination with the state board, applicable to vehicles tested during roadside auditing. Emission standards for issuance of a notice of noncompliance to a gross polluter shall be designed to maximize the identification of vehicles with substantial excess emissions.

(b) Procedures for issuing notices of noncompliance to owners of gross polluters, either at the time of the roadside audit, or subsequently by certified mail, or by obtaining a certificate of mailing as evidence of service, using technologies for recording license plate numbers. The notice of noncompliance shall provide that, unless the vehicle is brought to a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 42753 and 42754 and is participating in the pilot program pursuant to paragraph (2) of subdivision (b) of Section 42805, for emissions testing within 30 days, the owner will be required to pay an administrative fee of five hundred dollars (\$500) to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5) per day up to the five hundred dollars (\$500) maximum.

(c) Procedures for the testing of vehicles identified as gross polluters by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2 and is participating in the pilot program pursuant to paragraph (2) of subdivision (b) of Section 42805, to confirm that the vehicle exceeds the minimum emission standard for gross polluters set by the department.

(d) Procedures requiring owners of vehicles confirmed as gross polluters to have the vehicle repaired, resubmitted for testing, and obtain a certificate of compliance from a designated test-only facility or removed from service as attested by a certificate of nonoperation from the Department of Motor Vehicles within 30 days or be required to pay an administrative fee of not more than five hundred dollars (\$500), to be collected by the

1 Department of Motor Vehicles at the next annual registration renewal or the next change of
2 ownership, whichever occurs first. Commencing on the 31st day after issuance of the
3 notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5) per day up to
4 the five hundred dollars (\$500) maximum. The registration of a vehicle shall not be issued
5 or renewed if that vehicle has been identified as a gross polluter and has not been issued a
6 certificate of compliance. Except as provided in subdivision (b) of Section 9250.18 of the
7 Vehicle Code, any revenues collected by the Department of Motor Vehicles pursuant to this
8 subdivision and Section 9250.18 of the Vehicle Code shall be deposited in the Vehicle
9 Inspection and Repair Fund. If the ownership of the vehicle is transferred, the
10 administrative fee provided for in this section shall be waived if the vehicle is brought into
11 compliance.

12 (e) A procedure for notifying the Department of Motor Vehicles of notices of
13 noncompliance issued, so that the Department of Motor Vehicles may provide effective
14 collection of the administrative fee. The Department of Motor Vehicles shall cooperate with,
15 and implement the requirements of, the department in that regard.

16 **Comment.** Section 43651 continues former Health and Safety Code Section 44081(b)
17 without substantive change. Statements of legislative intent applicable to former Health and
18 Safety Code Section 44081(b) now apply to this section. See, e.g., Assembly Journal, 1995-
19 96 Reg. Sess. p. 8901.

20 **§ 43652. Authority to adopt regulations**

21 43652. The department may adopt any other regulations necessary for the effective
22 implementation of this article, as determined by the department.

23 **Comment.** Section 43652 continues former Health and Safety Code Section 44081(c)
24 without substantive change.

25 **§ 43653. Assistance of Highway Patrol**

26 43653. Upon the request of the department, the Department of the California Highway
27 Patrol shall provide assistance in conducting roadside auditing, to consist of (1) the
28 stopping of vehicles and traffic management, and (2) the issuance of notices of
29 noncompliance to gross polluters. The department shall reimburse the Department of the
30 California Highway Patrol for its costs of providing those services. The Department of
31 Transportation and affected local agencies shall provide necessary assistance and
32 cooperation to the department in the operation of the program.

33 **Comment.** Section 43653 continues former Health and Safety Code Section 44081(d)
34 without substantive change.

35 **§ 43654. Repair cost limit**

36 43654. There shall be no repair cost limit imposed pursuant to Section 42953 for any
37 repairs that are required to be made under the roadside auditing program, except as
38 provided in subdivision (c) of Section 42953.

39 **Comment.** Section 43654 continues former Health and Safety Code Section 44081(e)
40 without substantive change.

41 **§ 43655. Application where operating under waiver or extension**

42 43655. This article does not apply to vehicles operating under a valid repair cost waiver
43 or economic hardship extension issued pursuant to Sections 42950 to 42952, inclusive.

1 **Comment.** Section 43655 continues former Health and Safety Code Section 44081(f)
2 without substantive change.

3 Article 3. Pilot Demonstration Program

4 **§ 43700. Authority and objectives**

5 43700. The California Environmental Protection Agency, the state board, and the
6 department, in cooperation with, and with the participation of, the Environmental
7 Protection Agency, shall jointly undertake a pilot demonstration program to do all of the
8 following:

9 (a) Determine the emission reduction effectiveness of alternative loaded mode emission
10 tests compared to the IM240 test.

11 (b) Quantify the emission reductions, above and beyond those required by Environmental
12 Protection Agency regulation or by the biennial test requirement, achievable from a remote
13 sensing-based program that identifies gross polluting and other vehicles and requires the
14 immediate repair and retest of those gross polluting vehicles at a test-only station
15 established by this article.

16 (c) Determine if high polluting vehicles can be identified and directed to test-only stations
17 using criteria other than, or in addition to, age and model year, and whether this reduces the
18 number of vehicles which would otherwise be subject to inspection at test-only stations.

19 (d) Qualify emission reductions above and beyond those that are required by the
20 regulations of the Environmental Protection Agency, achievable from other program
21 enhancements pursuant to this article.

22 (e) Determine the extent to which the capacity of the test-only station network established
23 pursuant to Article 4 (commencing with Section 42850) of Chapter 5 needs to be expanded
24 to comply with Environmental Protection Agency performance standards.

25 **Comment.** Section 43700 continues former Health and Safety Code Section 44081.6(a)
26 without substantive change.

27 **§ 43701. Program provisions**

28 43701. The pilot demonstration program shall provide for, but not be limited to, all of the
29 following:

30 (a) For the purposes of this article, any vehicle subject to the inspection and maintenance
31 program may be selected to participate in the pilot demonstration program regardless of
32 when last inspected pursuant to this title.

33 (b) Registered owners of vehicles selected to participate in the pilot demonstration
34 program shall make the vehicle available for testing within a time period and at a testing
35 facility designated by the department. If necessary, the department shall increase the
36 capacity of the existing referee network in the area or areas where the pilot demonstration
37 program will be operating, in order to accommodate the convenient testing of selected
38 vehicles.

39 (c) If the department finds that a vehicle is emitting excessive emissions, the vehicle
40 owner shall be required to make necessary repairs within the existing cost limits and return
41 to a testing facility designated by the department. The vehicle owner shall have additional
42 repairs made if the repairs are requested and funded by the department. The department
43 shall also fund the cost of any necessary repairs if the owner of the vehicle has, within the
44 last two years, already paid for emissions-related repairs to the same vehicle in an amount

1 at least equal to the existing cost limits, in order to obtain a certificate of compliance or an
2 emission cost waiver.

3 (d) Vehicle owners who fail to bring the vehicle in for inspection or fail to have repairs
4 made pursuant to this article shall be issued notices of noncompliance. The notice shall
5 provide that, unless the vehicle is brought to a designated testing facility for testing, or
6 repair facility for repairs, within 15 days of notice of the requirement, the owner will be
7 required to pay an administrative fee of not more than five dollars (\$5) a day, not to exceed
8 two hundred fifty dollars (\$250), to be collected by the Department of Motor Vehicles at the
9 next annual registration renewal or the next change of ownership of the vehicle, whichever
10 occurs first. Commencing on the 31st day after issuance of the notice of noncompliance,
11 the fee shall accrue at the rate of five dollars (\$5) per day up to the two hundred fifty dollars
12 (\$250) maximum. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle
13 Code, any revenues collected by the Department of Motor Vehicles pursuant to this
14 subdivision and Section 9250.18 of the Vehicle Code shall be deposited into the Vehicle
15 Inspection and Repair Fund by the Department of Motor Vehicles.

16 **Comment.** Section 43701 continues former Health and Safety Code Section 44081.6(g)
17 without substantive change.

18 **§ 43702. Program protocol**

19 43702. (a) The California Environmental Protection Agency shall enter into a
20 memorandum of agreement with the Environmental Protection Agency to establish the
21 protocol for the pilot demonstration program. The memorandum of agreement shall ensure,
22 to the extent possible, that the Environmental Protection Agency will accept the results of
23 the pilot demonstration program as the findings of the Administrator of the Environmental
24 Protection Agency. The pilot demonstration program shall be conducted pursuant to the
25 memorandum of agreement.

26 (b) The review committee established pursuant to Chapter 4 (commencing with Section
27 42600) shall review the protocol for the pilot demonstration program, as established in the
28 signed memorandum of agreement, and recommend any modification that the review
29 committee finds to be appropriate for the pilot demonstration program. Any modification
30 shall become effective only upon the written agreement of the California Environmental
31 Protection Agency and the Environmental Protection Agency.

32 **Comment.** Section 43702 continues former Health and Safety Code Section 44081.6(b)-
33 (c) without substantive change.

34 **§ 43703. Contracts with private entities**

35 43703. (a) The department shall contract, on behalf of the committee, with an
36 independent entity to ensure quality control in the collection of data pursuant to the pilot
37 demonstration program. The department shall also contract, on behalf of the committee, for
38 an independent analysis of the data produced by the pilot demonstration program.

39 (b) Any contract entered into pursuant to this section shall not be subject to any
40 restrictions that are applicable to contracts in the Government Code or in the Public
41 Contract Code. The department shall report to the Legislature any action that is taken in
42 accordance with this subdivision.

43 **Comment.** Section 43703 continues former Health and Safety Code Section 44081.6(d)-
44 (e) without substantive change.

1 **§ 43704. Use of available resources**

2 43704. To the extent possible, the pilot demonstration program shall be conducted using
3 equipment, facilities, and staff of the state board, the department, and the Environmental
4 Protection Agency.

5 **Comment.** Section 43704 continues former Health and Safety Code Section 44081.6(f)
6 without change.

7 **§ 43705. Support of other agencies**

8 43705. The Department of Motor Vehicles, the Department of Transportation, local
9 agencies, and the state board shall provide necessary support for the program established
10 pursuant to this article.

11 **Comment.** Section 43705 continues former Health and Safety Code Section 44081.6(h)
12 without substantive change.

13 **§ 43706. Necessary procedures and standards**

14 43706. As soon as possible after January 1, 1995, the department and the state board
15 shall develop, implement, and revise as needed, emissions test procedures and emissions
16 standards necessary to conduct the pilot demonstration program.

17 **Comment.** Section 43706 continues former Health and Safety Code Section 44081.6(i)
18 without change.

19 ☞ **Staff Note.** (1) Health and Safety Code Section 44081.6(f) contains a reference to the
20 effective date of that section. The section was enacted on March 30, 1994. See 1994 Cal. Stat.
21 ch. 27, § 56. Thus, the section has an apparent effective date of January 1, 1995. That date
22 has been substituted for the existing reference.

23 (2) This section specifies a deadline for the development and implementation of specified
24 procedures and standards. The section may be obsolete. The staff would like to receive input
25 on two questions: (1) Was the requirement met? (2) Does the section still serve a useful
26 purpose?

27 **CHAPTER 8. REPAIR OR REMOVAL OF HIGH POLLUTERS**

28 **§ 43800. Definitions**

29 43800. For purposes of this chapter:

30 (a) “Account” means the High Polluter Repair or Removal Account created pursuant to
31 subdivision (a) of Section 43804.

32 (b) “High polluter” means a high-emission motor vehicle, including, but not limited to, a
33 gross polluter.

34 **Comment.** Section 43800 continues former Health and Safety Code Section 44090 without
35 substantive change.

36 **§ 43801. Repair or removal of vehicles**

37 43801. The high-polluter repair or removal program shall be designed to repair or
38 remove motor vehicles registered in this state that are subject to an inspection and
39 maintenance program and are producing high levels of emissions as a result of their use in
40 this state.

41 **Comment.** Section 43801 continues former Health and Safety Code Section 44092 without
42 change.

1 **§ 43802. Repair cost assistance**

2 43802. The repair of high polluters under the program shall be designed to offer repair
3 cost assistance to qualified low-income motor vehicle owners for vehicles that are in need
4 of repairs to obtain a certificate of compliance, as determined by the department.

5 **Comment.** Section 43802 continues former Health and Safety Code Section 44093 without
6 change.

7 **§ 43803. Program participation criteria**

8 43803. (a) Participation in the high polluter repair or removal program specified in this
9 chapter and Chapter 9 (commencing with Section 43900) shall be voluntary and shall be
10 available to the owners of high polluters that are registered in an area that is subject to an
11 inspection and maintenance program, have been registered for at least 24 months in the
12 district where the credits are to be applied and, are presently operational, and meet other
13 criteria, as determined by the department.

14 (b) The program shall provide for both of the following:

15 (1) As to the repair of a high polluter, payment to the owner of up to 80 percent of the
16 total cost of repair, as determined by the department, but the payment shall not exceed four
17 hundred fifty dollars (\$450).

18 (2) As to the removal of a high polluter, the program shall be subject to Chapter 9
19 (commencing with Section 43900).

20 (c) The department may authorize participation in the program based on a reasonable
21 estimate of the future revenues that will be available to the program.

22 **Comment.** Section 43803 continues former Health and Safety Code Section 44094 without
23 substantive change.

24 **§ 43804. High Polluter Repair or Removal Account**

25 43804. (a) The High Polluter Repair or Removal Account is hereby created in the Vehicle
26 Inspection and Repair Fund. All money deposited in the account pursuant to this chapter
27 and subdivision (d) of Section 6262 of the Revenue and Taxation Code shall be available,
28 upon appropriation by the Legislature, to the department and the state board to establish and
29 implement a program for the repair or replacement of high polluters pursuant to Chapter 9
30 (commencing with Section 43900) and Article 2 (commencing with Section 44050) of
31 Chapter 10.

32 (b) The department may accept donations or grants of funds from any person for
33 purposes of the program and shall deposit that money in the account. Donations, grants, or
34 other commitments of money to the account may be dedicated for specific purposes
35 consistent with the uses of the account, including, but not limited to, purchasing higher
36 emitting vehicles for the purpose of achieving the emission reductions required by the M-1
37 strategy of the 1994 State Implementation Plan (SIP).

38 (c) The funds which are available in the account in any fiscal year for a particular area that
39 is subject to an inspection and maintenance program shall be distributed to reflect the
40 number of vehicles registered in that area to the total number of vehicles registered in areas
41 that are subject to inspection and maintenance programs. That percentage shall be the
42 percentage of the total funds allocated to the program in that fiscal year which are available
43 for that particular area.

44 (d) During any fiscal year, the money in the account shall be available, upon
45 appropriation by the Legislature, for the following purposes:

(1) Assistance in the repair of high polluters pursuant to the program established pursuant to Article 2 (commencing with Section 44050) of Chapter 10.

(2) Voluntary accelerated retirement of high polluters.

(3) Rulemaking, vehicle testing, and other technical work required to implement and administer the repair assistance program established pursuant to Article 2 (commencing with Section 44050) of Chapter 10 and the program described in Chapter 9 (commencing with Section 43900).

(e) An amount of one million dollars (\$1,000,000) annually for the 1997-98 fiscal year and the 1998-99 fiscal year shall be made available from the account for a program to evaluate the emission reduction effectiveness of the M-1 strategy of the 1994 SIP.

(f) All remaining amounts in the account shall be available to the program of repair assistance established pursuant to Article 2 (commencing with Section 44050) of Chapter 10.

(g) In no case shall the funding available in any subsequent fiscal year to the department for repairing or removing high-emitting vehicles under the inspection and maintenance program be less than the amount made available from the Vehicle Inspection and Repair Fund for that purpose in the 1995-96 fiscal year.

Comment. Section 43804 continues former Health and Safety Code Section 44091 without substantive change. Uncodified statutory provisions applicable to former Health and Safety Code Section 44091 now apply to this section. See 1997 Cal. Stat. ch. 802, § 1 (legislative intent).

§ 43805. Fee contingent on specified occurrences

43805. On or after July 1, 1998, in the event that the smog impact fee imposed pursuant to Section 6262 of the Revenue and Taxation Code is ruled unconstitutional by an appellate court or the California Supreme Court, or if the state is in any manner prevented by either of these courts from imposing or collecting the fee, all of the following actions shall immediately take place:

(a) The fee specified in subdivision (a) of Section 44100 shall be six dollars (\$6). The revenues from that fee shall be allocated as follows:

(1) Except as provided for in paragraph (2), the revenue generated by two dollars (\$2) of the fee shall be deposited in the account created by Section 43804, while the revenue generated by the remaining four dollars (\$4) shall continue to be deposited in the Vehicle Inspection and Repair Fund.

(2) All revenue generated by the fee imposed at first registration of a motor vehicle exempted under paragraph (4) of subdivision (a) of Section 42900 shall be deposited in the account created by Section 43804.

(b) Except as specified in subdivision (c), this section shall remain in effect only until January 1, 2005, and as of that date shall become inoperative, unless a later enacted statute, that is enacted before June 30, 2004, deletes or extends that date.

(c) With respect to motor vehicles registered in the south coast district, this section shall remain in effect until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2009, deletes or extends that date.

Comment. Section 43805 continues former Health and Safety Code Section 44091.1 without substantive change.

§ 43806. Adoption of regulations

43806. The department shall administer the program in accordance with regulations adopted by the department.

Comment. Section 43806 continues former Health and Safety Code Section 44095(a) without substantive change.

§ 43807. Relation to other programs

43807. Nothing in this chapter shall be construed as superseding or precluding any similar program that is administered by a district, any other public agency, or any other person.

Comment. Section 43807 continues former Health and Safety Code Section 44095(b)(1) without substantive change.

§ 43808. Analysis of program

43808. The state board shall develop a methodology for, and shall undertake, a uniform data analysis of the program operated pursuant to this chapter and any similar programs operated in this state for the purpose of providing an accounting of the emission reductions that are achieved by these programs.

Comment. Section 43808 continues former Health and Safety Code Section 44095(b)(2) without substantive change.

§ 43809. Authority to contract

43809. The department may directly operate the program or may provide for the program's operation pursuant to contract. The department may contract with local agencies, community colleges, or private entities to perform all or any portion of the program.

Comment. Section 43809 continues former Health and Safety Code Section 44095(c) without change.

CHAPTER 9. ACCELERATED LIGHT-DUTY VEHICLE RETIREMENT PROGRAM

§ 43900. Legislative findings and declarations

43900. The Legislature hereby finds and declares as follows:

(a) Emission reduction programs based on market principles have the potential to provide equivalent or superior environmental benefits when compared to existing controls at a lower cost to the citizens of California than traditional emission control requirements.

(b) Several studies have demonstrated that a small percentage of light-duty vehicles contribute disproportionately to the on-road emissions inventory. Programs to reduce or eliminate these excess emissions can significantly contribute to the attainment of the state's air quality goals.

(c) Programs to accelerate fleet turnover can enhance the effectiveness of the state's new motor vehicle standards by bringing more low-emission vehicles into the on-road fleet earlier.

(d) The California State Implementation Plan for Ozone (SIP), adopted November 15, 1994, and submitted to the Environmental Protection Agency, calls for added reductions in reactive organic gases (ROG) and oxides of nitrogen (NO_x) from light-duty vehicles by the year 2010. One of the more market-oriented approaches reflected in the SIP, known as the M-1 strategy, calls for accelerating the retirement of older light-duty vehicles in the South Coast Air Quality Management District to achieve the following emission reductions:

Emissions, TPD(tons per day)

Year	(ROG+NOsubx)
1999	9
2002	14
2005	20
2007	22
2010	25

(e) A program for achieving those and more emission reductions should be based on the following principles:

(1) The first two years should include a thorough assessment of the costs and short-term and long-term emission reduction benefits of the program, compared with other emission reduction programs for light-duty vehicles, which shall be reflected in a report and recommendations by the state board to the Governor and the Legislature on strategies and funding needs for meeting the emission reduction requirements of the M-1 strategy of the 1994 SIP for the years 1999 to 2010, inclusive.

(2) The program should first contribute to the achievement of the emission reductions required by the inspection and maintenance program and the M-1 strategy of the 1994 SIP, and should permit the use of mobile source emission reduction credits for other purposes currently authorized by the state board or a district. Remaining credits may be used to achieve other emission reductions, including those required by the 1994 SIP, in a manner consistent with market-based strategies. Emission credits shall not be used to offset emission standards or other requirements for new vehicles, except as authorized by the state board.

(3) Participation by the vehicle owner shall be entirely voluntary and the program design should be sensitive to the concerns of car collectors and to consumers for whom older vehicles provide affordable transportation.

(4) The program design shall provide for real, surplus, and quantifiable emission reductions, based on an evaluation of the purchased vehicles, taking into account factors that include per-mile emissions, annual miles driven, remaining useful life of retired vehicles, and emissions of the typical or average replacement vehicle, as determined by the state board. The program shall ensure that there is no double counting of emission credits among the various vehicle removal programs.

(5) The program should specify the emission reductions required and then utilize the market to ensure that these reductions are obtained at the lowest cost.

(6) The program should be privately operated. It should utilize the experience and expertise gained from past successful programs. Existing entities that are authorized by, contracted with, or otherwise sanctioned by a district and approved by the state board and the United States Environmental Protection Agency shall be fully utilized for purposes of implementing this chapter. Nothing in this paragraph restricts the Department of Consumer Affairs from selecting qualified contractors to operate or administer any program specified pursuant to this title.

(7) The program should be designed insofar as possible to eliminate any benefit to any participants from vehicle tampering and other forms of cheating. To the extent that tampering and other forms of cheating might be advantageous, the program design shall include provisions for monitoring the occurrence of tampering and other forms of cheating.

(8) Emission credits should be expressed in pounds or other units, and their value should be set by the marketplace. Any contract between a public entity and a private party for the purchase of emission credits should be based on a price per pound which reflects the market value of the credit at its time of purchase. Emission reductions required by the M-1

1 and other strategies of the 1994 SIP shall be accomplished by competitive bid among
2 private businesses solicited by the oversight agency designated pursuant to Section 43903.

3 **Comment.** Section 43900 continues former Health and Safety Code Section 44100 without
4 substantive change.

5 **§ 43901. Adoption of regulations implementing program**

6 43901. Not later than December 31, 1998, the state board shall adopt, by regulation, a
7 statewide program to commence in 1999 that does all of the following:

8 (a) Provides for the creation, exchange, use, and retirement of light-duty vehicle mobile
9 source emission reduction credits. The credits shall be fungible and exchangeable in the
10 marketplace, and shall reflect the actual emissions of the vehicles that are retired or
11 otherwise disposed of, by measurement, appropriate sampling, or correlations developed
12 from appropriate sampling. The numerical value of credits may be constant over a defined
13 lifetime, or may decline with age measured from the time of origination of the credits. In all
14 cases, the numerical value of the credits shall reflect the useful life expectancies and the
15 projected in-use emissions of the retired vehicles in a manner consistent with the
16 assumptions used in determining the emissions inventory. The credits shall be fully
17 recognized by the United States Environmental Protection Agency, the state board, and the
18 districts.

19 (b) Sets out the criteria for retiring or otherwise disposing of high-emitting vehicles
20 purchased for this program.

21 (c) Authorizes the issuance of those credits to private entities that purchase and properly
22 retire high-emitting vehicles.

23 (d) Authorizes the resale of those credits to public or private entities to be used to achieve
24 the emission reduction requirements of the 1994 state implementation plan, meet the
25 requirements of the inspection and maintenance program, satisfy compliance with other
26 emission reduction mandates, as determined by the district or the state board, create local
27 growth allowances, or satisfy new or modified source emission offset requirements.
28 Nothing in this chapter limits a district's authority to apply emission discount factors
29 pursuant to district rules that regulate emissions banks, trades, or offsets.

30 (e) Provides for the retirement of those credits when used.

31 (f) Includes accounting procedures to credit emissions reductions achieved through
32 vehicle scrappage to the M-1 strategy of the 1994 SIP and the inspection and maintenance
33 program.

34 (g) Contains a program plan pursuant to Section 43910.

35 (h) Satisfies the attributes described in subdivision (e) of Section 43900.

36 **Comment.** Section 43901 continues former Health and Safety Code Section 44101 without
37 substantive change.

38 **§ 43902. Relation to other programs**

39 43902. (a) The state board, the Department of Motor Vehicles, and the department shall
40 harmonize the requirements and implementation of this program with the motor vehicle
41 inspection program and other programs contained in this title, particularly the provisions
42 relating to gross polluters in Chapter 7 (commencing with Section 43600) and the repair or
43 removal of high polluters in Chapter 8 (commencing with Section 43800).

44 (b) Insofar as practicable, these programs shall be seamless to the participants and the
45 public.

1 **Comment.** Section 43902 continues former Health and Safety Code Section 44102 without
2 substantive change.

3 **§ 43903. State oversight of program**

4 43903. The regulations shall specify that the program shall be operated as a privately
5 operated program under the oversight of a state agency to be designated by the Governor.
6 In consultation with the districts and interested parties, the state oversight agency shall be
7 responsible for the implementation of the program, including the following:

8 (a) Solicitation and analysis of public comments on the overall program goals, objectives,
9 and design.

10 (b) Development of the program structure.

11 (c) Overall quality control, including verifying emission reductions and certification of
12 the emission reduction credits.

13 (d) Definition of terms such as “high emitter,” “collector interest vehicles,” and
14 “nonrevivable junk certificates.”

15 **Comment.** Section 43903 continues former Health and Safety Code Section 44105 without
16 change.

17 **§ 43904. Discouraging misconduct**

18 43904. The program shall discourage tampering and other forms of cheating, and
19 effectively address “avoidance vehicles,” such as nonregistered vehicles and vehicles
20 lacking a sufficient inspection and maintenance history.

21 **Comment.** Section 43904 continues former Health and Safety Code Section 44107 without
22 change.

23 **§ 43905. Monitoring and preventing misconduct**

24 43905. The program shall include provisions for monitoring and preventing all forms of
25 tampering or other forms of cheating, and shall effectively address “avoidance vehicles”
26 such as nonregistered vehicles and vehicles lacking a sufficient inspection and maintenance
27 history. If fraud is detected, the program shall include provisions for suspending all new
28 transactions with the entity suspected of fraud until problems are corrected and revaluing all
29 credits used to meet the emissions reduction requirements. Contracts with authorized
30 entities shall include remedies in cases of fraud.

31 **Comment.** Section 43905 continues former Health and Safety Code Section 44106 without
32 change.

33 **§ 43906. Solicitation of vehicle owners**

34 43906. The program shall include appropriate means to solicit vehicle owners, including
35 mass mailings, media advertising, news coverage, and direct mail to owners of candidate
36 vehicles, and may include high-emitting vehicles based on smog check or remote sensing
37 or high-emitter profile information.

38 **Comment.** Section 43906 continues former Health and Safety Code Section 44109 without
39 change.

1 **§ 43907. Consideration of effect on purchase convenience**

2 43907. The program shall ensure that vehicle purchase transactions are convenient to
3 vehicle owners, including advance screening to reasonably assure that vehicles qualify for
4 the program.

5 **Comment.** Section 43907 continues former Health and Safety Code Section 44115 without
6 change.

7 **§ 43908. Vehicle disposal**

8 43908. Vehicle disposal under the program shall be consistent with appropriate state
9 board guidance and provisions of the Vehicle Code dealing with vehicle disposal and parts
10 reuse, and shall do both of the following:

11 (a) Allow for trading, sale, and resale of the vehicles between licensed auto dismantlers
12 or other appropriate parties to maximize the salvage value of the vehicles through the
13 recycling, sales, and use of parts of the vehicles, consistent with the Vehicle Code and
14 appropriate state board guidelines.

15 (b) Set aside and resell to the public any vehicles with special collector interest. No
16 emission reduction credit shall be generated for vehicles that are resold to the public.
17 Vehicles acquired for their collector interest shall be properly repaired to meet minimum
18 established vehicle emission standards before reregistration, unless the vehicle is sold with
19 a nonrepairable vehicle certificate or a nonrevivable junk certificate.

20 **Comment.** Section 43908 continues former Health and Safety Code Section 44120 without
21 change.

22 **§ 43909. Notice to candidates and certification of vehicle status**

23 43909. Notwithstanding any other provision of law, the program shall also do both of
24 the following:

25 (a) Authorize the Department of Motor Vehicles, at the request of persons engaged in the
26 purchase and retirement of vehicles under the program, to send notices to vehicle owners
27 who are candidates for the sale of vehicles under the program describing the opportunity to
28 participate in the program. The Department of Motor Vehicles may recover all costs of
29 those notifications from the requesting party or parties.

30 (b) Allow the issuance of nonrevivable junk certificates for vehicles retired under the
31 program, which shall allow program vehicles to be scrapped only for parts, except those
32 parts identified pursuant to subdivision (a) of Section 43908.

33 **Comment.** Section 43909 continues former Health and Safety Code Section 44103 without
34 substantive change.

35 **§ 43910. Execution plan**

36 43910. The regulations adopted pursuant to subdivision (a) of Section 43901 shall
37 include a plan to guide the execution of the first two years of the program, to assess the
38 results, and to formulate recommendations. The plan shall also verify whether the light-
39 duty vehicle scrapping program included in the state implementation plan adopted on
40 November 15, 1994, can reasonably be expected to yield the required emissions reductions
41 at reasonable cost-effectiveness. Scrapping of any vehicles under this program for program
42 development or testing or for generating emission reductions to be credited against the M-1
43 strategy of the 1994 SIP may proceed before the state board adopts the regulations pursuant
44 to subdivision (a) of Section 43901 or the plan required by this section. The emission
45 credits assigned to these vehicles shall be adjusted as necessary to ensure that those credits

are consistent with the credits allowed under the regulations adopted pursuant to Section 43901. The plan shall include a baseline study, for the geographical area or areas representative of those to be targeted by this program and by measure M-1 in the SIP, of the current population of vehicles by model year and market value and the current turnover rate of vehicles, and other factors that may be essential to assessing program effectiveness, cost-effectiveness, and market impacts of the program.

Comment. Section 43910 continues former Health and Safety Code Section 44104.5(a) without substantive change.

§ 43911. Progress report

43911. At the end of each of the two calendar years after the adoption of the program plan, the state board, in consultation with the department, shall adopt and publish a progress report evaluating each year of the program. These reports shall address the following topics for those vehicles scrapped to achieve both the M-1 SIP objectives and those vehicles scrapped or repaired to generate mobile-source emission reduction credits used for other purposes:

- (a) The number of vehicles scrapped or repaired by model year.
- (b) The measured emissions of the scrapped or repaired vehicles tested during the report period, using suitable inspection and maintenance test procedures.
- (c) Costs of the vehicles in terms of amounts paid to sellers, the costs of repair, and the cost-effectiveness of scrappage and repair expressed in dollars per ton of emissions reduced.
- (d) Administrative and testing costs for the program.
- (e) Assessments of the replacement vehicles or replacement travel by model year or emission levels, as determined from interviews, questionnaires, diaries, analyses of vehicle registrations in the study region, or other methods as appropriate.
- (f) Assessments of the net emission benefits of scrapping in the year reported, considering the scrapped vehicles, the replacement vehicles, the effectiveness of repair, and other effects of the program on the mix of vehicles and use of vehicles in the geographical area of the program, including in-migration of other vehicles into the area and any tendencies to increased market value of used vehicles and prolonged useful life of existing vehicles, if any.
- (g) Assessments of whether the M-1 strategy of the 1994 SIP can reasonably be expected to yield the required emission reductions.

Comment. Section 43911 continues former Health and Safety Code Section 44104.5(b) without substantive change.

§ 43912. Report to Governor and Legislature

43912. Not later than June 30, 1999, and every three years thereafter, the state board, in consultation with the department, shall evaluate the performance of the programs specified in Chapter 8 (commencing with Section 43800) and this chapter and, based on that evaluation, report to the Governor and Legislature. The report shall evaluate the overall performance of the program, including its cost-effectiveness in terms of dollars per ton of credited or reduced emissions, description of the methods and procedures to assure that the emission reductions are real, surplus, and quantifiable, the extent of the market for eligible vehicles, a recommendation for an appropriate allocation of expenditures between removal or repair of vehicles that reflects the relative cost-effectiveness of the options, and any other recommendation for improving the effectiveness of these programs. This report shall also contain all of the following:

1 (a) Identification of procedures for distinguishing the emission reductions attributed to
2 scrapping for the purpose of generating emission reductions credits and scrapping that
3 occurs or would have occurred as a result of the inspection and maintenance program
4 managed by the Department of Consumer Affairs and other programs.

5 (b) A projection of the emissions reductions and cost-effectiveness that might be realized
6 by scrapping or repairing light-duty vehicles through the year 2010, considering changes
7 expected in the vehicle fleet and likely impacts of scrapping or repair on the mix and
8 emissions of vehicles.

9 (c) A comparison of the effectiveness of scrappage, repair, or upgrade to other programs
10 for light-duty vehicles.

11 (d) A recommended scrapping program, or other more cost-effective means, for
12 continuing to achieve the emissions reductions required by the M-1 strategy of the 1994
13 State Implementation Plan, considering likely emission reductions in the attainment year,
14 costs, cost-effectiveness, issues of monitoring and verification, and status of the
15 Environmental Protection Agency's approval of the state's 1994 SIP.

16 **Comment.** Section 43912 continues former Health and Safety Code Section 44104.5(c)
17 without substantive change.

18 § 43913. Funding

19 43913. (a) Funds shall be available to the state board from the High Polluter Repair or
20 Removal Account created pursuant to subdivision (a) of Section 43804. Those funds shall
21 be used to perform the rulemaking, vehicle testing, and other technical work necessary to
22 achieve the objectives set forth in Sections 43901 and 43910 to 43912, inclusive. Those
23 administrative expenditures shall not exceed a total of three million dollars (\$3,000,000)
24 over the first three years of the program.

25 (b) Funds available to the state board pursuant to paragraph (1) of subdivision (d) of
26 Section 43804 shall be used to purchase and retire mobile source emission reduction credits
27 resulting from the retirement of light-duty vehicles pursuant to this chapter for the purpose
28 of achieving the emission reductions required by the M-1 strategy of the 1994 SIP. If
29 offers from authorized private scrapping entities are deemed, by the department, consistent
30 with the criteria set forth in Section 43901, to be noncompetitive in cost-effectiveness, in
31 terms of dollars per ton of emissions reduced, the department shall directly purchase
32 vehicles from owners in order to achieve the greatest reduction in emissions at the least
33 cost. If these purchases, in turn, are deemed by the department to be not cost-competitive,
34 in terms of dollars per ton of emissions reduced, with other strategies identified by the state
35 board, the department shall use the funds to pursue other more cost-effective strategies
36 identified by the state board. All emission reduction credits purchased with the funds
37 described in this subdivision shall be retired and credited to the M-1 strategy of the 1994
38 SIP.

39 (c) This chapter shall not create an obligation on the Part of any state or local agency to
40 expend money, incur substantial administrative costs, or purchase credits to meet the M-1
41 requirements of the 1994 State Implementation Plan until the Director of Finance certifies
42 that there are sufficient funds in the High Polluter Repair or Removal Account for purposes
43 of the chapter.

44 (d) This chapter shall not create an obligation to use existing funds that are currently used
45 to meet other air quality mandates, including funds collected pursuant to Sections 40601 to
46 40603, inclusive, and 40750 to 40753, inclusive, for purchasing credits to satisfy the M-1
47 or other strategies of the 1994 SIP.

(e) The state board and the department shall seek federal funds to be deposited in the High Polluter Repair or Removal Account, and shall explore the availability of other funding sources, such as private contributions, the Petroleum Violation Escrow Account, and proceeds from fees, fines, or other penalties resulting from fuel specification violations.

Comment. Section 43913 continues former Health and Safety Code Section 44104 without substantive change.

Staff Note. The last sentence in Health and Safety Code Section 44104(b) erroneously refers to “this paragraph.” The staff assumes that the reference was intended to be to the subdivision and has changed the reference to that effect. The staff would like to receive input on whether this change was appropriate.

§ 43914. Standards for certification and use of emission reduction credits

43914. The state board shall develop standards for the certification and use of emission reduction credits to ensure that the credits are real, surplus, and quantifiable after accounting for program uncertainties.

Comment. Section 43914 continues former Health and Safety Code Section 44121 without change.

§ 43915. Quantification of emission reductions achieved

43915. Emission reductions achieved from retired vehicles shall be quantified as follows:

(a) Vehicle emissions shall be based on either direct testing, statistical sampling, or emission modeling methods. Sampling of a statistically significant portion of the vehicles may be used to estimate emission benefits or to develop and validate correlations for use in estimating emission benefits.

(b) A reasonably reliable mechanism shall be applied to estimate vehicle miles traveled and the remaining useful life of each purchased vehicle. The odometer reading shall be matched on each purchased vehicle with the records of the Department of Motor Vehicles and smog check records to verify driving history, or statistical data shall be used to estimate vehicle use.

(c) An annual survey shall be performed of a statistically meaningful number of participants to determine replacement vehicle and post-participation behavior and also to determine the extent, if any, of in-migration of low-cost vehicles due to price increases in the scrapping market area resulting from the scrap program.

Comment. Section 43915 continues former Health and Safety Code Section 44122 without change.

CHAPTER 10. FINANCIAL PROVISIONS

Article 1. Fee for Certificate, Waiver, or Extension

§ 44000. Issuance of certificate, waiver, or extension

44000. (a) The department shall prescribe the form of the certificate of compliance or noncompliance, repair cost waivers, and economic hardship extensions.

(b) The certificates, repair cost waivers, and economic hardship extensions shall be in the form of an electronic entry filed with the department, the Department of Motor Vehicles, and any other person designated by the department. The department shall ensure that the

1 motor vehicle owner or operator is provided with a written report, signed by the licensed
2 technician who performed the inspection, of any test performed by a smog check station,
3 including a pass or fail indication, and written confirmation of the issuance of the
4 certificate.

5 (c) Following implementation of the electronic entry certificate under subdivision (b), the
6 department may require the modification of the analyzers and other equipment required at
7 smog check stations to prevent the entry of a certificate that has not been issued or validated
8 through prepayment of the fee authorized by Section 44001.

9 **Comment.** Section 44000 continues former Health and Safety Code Section 44060(a)-(b)
10 and (f) without substantive change.

11 **§ 44001. Department fee for issuance of certification, waiver, or extension**

12 44001. (a) The department shall charge a fee to a smog check station, including a test-
13 only station, and a station providing referee functions, for a motor vehicle inspected at that
14 station that meets the requirements of this title and is issued a certificate of compliance, a
15 certificate of noncompliance, repair cost waiver, or economic hardship extension.

16 (b) The fee charged pursuant to subdivision (a) shall be calculated to recover the costs of
17 the department and any other state agency directly involved in the implementation,
18 administration, or enforcement of the motor vehicle inspection and maintenance program,
19 and shall not exceed the amount reasonably necessary to fund the operation of the program,
20 including all responsibilities, requirements, and obligations imposed upon the department
21 or any of those state agencies by this title, that are not otherwise recoverable by fees
22 received pursuant to Section 43151.

23 (c) Except for adjustments to reflect changes in the Consumer Price Index, as published
24 by the United States Bureau of Labor Statistics, the fee for each certificate, waiver, or
25 extension shall not exceed seven dollars (\$7).

26 (d) Fees collected by the department pursuant to this section shall be deposited in the
27 Vehicle Inspection and Repair Fund. It is the intent of the Legislature that a prudent surplus
28 be maintained in the Vehicle Inspection and Repair Fund. If the surplus exceeds the
29 reasonable costs of administration of the programs specified in this title and in Chapter 20.3
30 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the
31 department shall, by regulation, prescribe a lower fee for the certificates, waivers, and
32 extensions.

33 **Comment.** Section 44001 continues former Health and Safety Code Section 44060(c)
34 without substantive change.

35 **§ 44002. Prohibited transactions**

36 44002. The sale or transfer of the certificate of compliance or noncompliance, repair cost
37 waivers, and economic hardship extensions by a licensed smog check station or test-only
38 station to any other licensed smog check station or to any other person, and the purchase or
39 acquisition of the certificate, waiver, or extension, by any person, other than from the
40 department, the department's designee, or pursuant to a vehicle's inspection or repair
41 conducted pursuant to this title, is prohibited.

42 **Comment.** Section 44002 continues former Health and Safety Code Section 44060(e)
43 without substantive change.

1 **§ 44003. Fee charged by smog check station**

2 44003. The fee charged by licensed smog check stations to consumers for a certificate,
3 waiver, or extension shall be the same amount that is charged by the department.

4 **Comment.** Section 44003 continues former Health and Safety Code Section 44060(g)
5 without change.

6 Article 2. Low-Income Repair Assistance Program

7 **§ 44050. Creation of program**

8 44050. The department shall offer a low-income repair assistance program beginning
9 March 1, 1998, through entities authorized to perform referee functions.

10 **Comment.** Section 44050 continues former Health and Safety Code Section 44062.1(a)
11 without change.

12 **§ 44051. Eligibility**

13 44051. (a) The repair assistance program shall be available to eligible individuals based
14 on a maximum income level of 175 percent of the federal poverty level, as published
15 quarterly in the Federal Register by the Department of Health and Human Services.

16 (b) The department shall offer low-income repair cost assistance, funded by the High
17 Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created
18 pursuant to subdivision (a) of Section 43804 and revenues generated by the smog impact
19 fee pursuant to Section 6262 of the Revenue and Taxation Code, to individuals who obtain
20 an economic hardship extension, based on the cost-effectiveness and air quality benefit of
21 the needed repair. Repair assistance may include retesting costs.

22 (c) An applicant for low-income repair assistance shall file an application on a form
23 prescribed by the department and shall certify under penalty of perjury that the applicant
24 meets the applicable eligibility standards.

25 (d) Verification of low-income eligibility shall be based on at least one form of
26 documentation, as determined by the department, including, but not limited to, (1) an
27 income tax return, (2) an employment warrant, or (3) a form of public assistance
28 verification.

29 **Comment.** Section 44051 continues former Health and Safety Code Section 44062.1(b)
30 without change.

31 **§ 44052. Funding**

32 44052. The low-income repair assistance program shall be funded by the High Polluter
33 Repair or Removal Account until June 30, 1998. Thereafter, a minimum of twenty million
34 dollars (\$20,000,000) shall be made available annually for the program through funding
35 provided by revenues generated by the smog impact fee pursuant to Section 6262 of the
36 Revenue and Taxation Code.

37 **Comment.** Section 44052 continues former Health and Safety Code Section 44062.1(c)
38 without change.

39 **§ 44053. Performance of repairs**

40 44053. All repairs subsidized by the state through the program shall be performed at a
41 repair station licensed and certified pursuant to Sections 42753 and 42754 at the time of

1 testing and application for an economic hardship extension. Repair shall be based upon a
2 preapproved list of repairs for cost-effective emission reductions.

3 **Comment.** Section 44053 continues former Health and Safety Code Section 44062.1(d)
4 without change.

5 **§ 44054. Copayment**

6 44054. The qualified low-income motor vehicle owner receiving repair assistance
7 pursuant to this article shall contribute a copayment equivalent to the repair cost limit, as
8 determined by the department as specified in Section 42954, either in cash, or in emissions-
9 related partial repairs as verified by a test-only station pursuant to Section 42951, or a
10 combination thereof. If the repair cost exceeds the applicable repair cost limit, the
11 department shall inform a qualified low-income motor vehicle owner of all options for
12 compliance at the time of testing and repair.

13 **Comment.** Section 44054 continues former Health and Safety Code Section 44062.1(e)
14 without substantive change.

15 **§ 44055. Data collection**

16 44055. The department shall collect data from the program to provide information on
17 how to improve the program. Data collection shall include all of the following:

18 (a) The number of low-income motor vehicle owners that are eligible for repair
19 assistance.

20 (b) The number of eligible motor vehicle owners that use repair assistance funds.

21 (c) The potential for fraud.

22 (d) The average repair bills.

23 (e) The types of repairs being done.

24 (f) The amount of partial repairs done prior to receipt of repair assistance.

25 (g) The emissions benefits of providing repair assistance.

26 **Comment.** Section 44055 continues former Health and Safety Code Section 44062.1(f)
27 without change.

28 **§ 44056. Report to Legislature**

29 44056. The department shall collect data and develop information and shall report to the
30 Legislature on or before April 1, 1999, on eligibility criteria, program participation, the cost
31 of vehicle repairs, and the funding resources needed to implement the program.

32 **Comment.** Section 44056 continues former Health and Safety Code Section 44062.1(g)
33 without change.

34 **§ 44057. “Low-income motor vehicle owner”**

35 44057. For purposes of this article, means a person whose income does not exceed 175
36 percent of the federal poverty level.

37 **Comment.** Section 44057 continues former Health and Safety Code Section 44062.1(h)
38 without change.

Article 3. Miscellaneous Provisions

§ 44100. Annual smog abatement fee

44100. (a) Motor vehicles exempted under paragraph (4) of subdivision (a) of Section 42900 shall be subject to an annual smog abatement fee of four dollars (\$4). Payment of this fee shall be made to the Department of Motor Vehicles at the time of registration of the motor vehicle.

(b) Fees collected pursuant to this section shall be deposited on a daily basis into the Vehicle Inspection and Repair Fund.

Comment. Section 44100 continues former Health and Safety Code Section 44060(d) without substantive change.

§ 44101. Disposition of fees and penalties collected

44101. The fees and penalties collected by the department pursuant to this title shall be deposited in the Vehicle Inspection and Repair Fund in accordance with the procedures established by the department, and is available to the department, as specified by Section 9886.2 of the Business and Professions Code, and, upon appropriation by the Legislature, to any other state agency directly involved in the implementation of the motor vehicle inspection program, to carry out its functions and duties specified in this title or in any other law.

Comment. Section 44101 continues former Health and Safety Code Section 44061 without substantive change.

§ 44102. Disposition of fees and penalties collected

44102. All fees collected by the department under this title and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code shall be deposited in the Vehicle Inspection and Repair Fund and are available to the department as specified by Section 9886.2 of the Business and Professions Code.

Comment. Section 44102 continues the second paragraph of former Health and Safety Code Section 44062 without substantive change. The first paragraph of former Health and Safety Code Section 44062, governing the abolition of the Vehicle Inspection Fund and the Automotive Repair Fund and the transfer of any remaining money in those funds to the Vehicle Inspection and Repair Fund is obsolete and has not been continued.

☞ **Staff Note.** This provision appears to be substantially redundant. Compare proposed Section 44101. The staff would like to receive input on whether this section serves a useful purpose and should be continued.


§ 44103. Emissions reduction credits

44103. (a) The state board shall adopt, by regulation, procedures to establish an emissions credit exchange program whereby persons may contribute to the Vehicle Inspection and Repair Fund, and receive equitable emission reduction credits for those contributions.

(b) Districts may establish procedures to generate marketable emission reduction credits from contributions toward the repair subsidy program specified in Article 2 (commencing with Section 44050) of Chapter 10. Emission reduction credits generated pursuant to this subdivision may be used to meet or offset transportation control measure requirements, average vehicle ridership reductions, or other mobile source emission requirements, as determined by the district.

(c) The credits established pursuant to subdivision (a) or (b) shall not be allowed until the emission reduction goals established by the amendments enacted in 1990 to the Clean Air Act (P.L. 101-549) have been achieved.

Comment. Section 44103 continues former Health and Safety Code Section 44062.2 without substantive change.


 **Staff Note.** An amended form of Health and Safety Code Section 44062.2 and a new form that would become operative when the amended form becomes inoperative by its own terms never became operative and have not been continued. The sections are subject to an operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 384-85 (1998).

§ 44104. Proceeds of specified litigation

44104. (a) There may be transferred into the Vehicle Inspection and Repair Fund the proceeds of the litigation known as M.D.L. Docket No. 150 AWT, as adjudicated in the United States District Court for the Central District of California.

(b) The money transferred pursuant to subdivision (a) shall be available, upon appropriation by the Legislature, for use by the department to establish and implement a program for the repair, retrofit, or removal of gross polluting vehicles.

Comment. Section 44104 continues former Health and Safety Code Section 44063 without change.

 **Staff Note.** This section, added in 1994, may be obsolete. The staff would like to receive input on whether the proceeds have been transferred yet, and if so, whether the section has any continued usefulness.

CHAPTER 11. PUBLIC INFORMATION

§ 44200. Information regarding smog check program and emission warranties

44200. (a) The department shall develop within the bureau, with the advice and technical assistance of the state board, a public information program for the purpose of providing information designed to increase public awareness of the smog check program throughout the state and emissions warranty information to motor vehicle owners subject to an inspection and maintenance program required pursuant to this title. The department shall provide, upon request, either orally or in writing, information regarding emissions related warranties and available warranty dispute resolution procedures.

(b) The telephone number and business hours, and the address if appropriate, of the emissions warranty information program shall be noticed on the vehicle inspection report provided by the test analyzer system for any vehicle which fails the analyzer test.

Comment. Section 44200 continues former Health and Safety Code Section 44070 without substantive change.

§ 44201. Information regarding motor vehicle emissions

44201. (a) The department shall develop and continuously conduct a public information program, in consultation with the state board. The program shall be designed to develop and maintain public support and cooperation for the motor vehicle inspection and maintenance program and shall include information on all of the following:

- (1) The health damage caused by air pollution.

- (2) The contribution of automobiles to air pollution and the gross polluter problem.
(3) Whether a motorist's vehicle could be a gross polluter without the motorist knowing.
(4) The importance of maintaining a vehicle's emission control devices in good working order and the importance of the program.

(b) That information shall be disseminated by all means that the department determines to be feasible and cost-effective, including, but not limited to, television, newspaper, and radio advertising and trailers in movie theaters. The department may also utilize grass roots community networks, including local opinion leaders, churches, the PTA, and the workplace. Extensive marketing research shall be performed to identify the target population.

Comment. Section 44201 continues former Health and Safety Code Section 44070.5 without change.

§ 44202. Funding

44202. For purposes of implementing the smog check public awareness and emissions warranty information programs, the department shall use funds from the fee charged for each certificate of compliance or noncompliance which are deposited in the Vehicle Inspection and Repair Fund pursuant to Section 44001.

Comment. Section 44202 continues former Health and Safety Code Section 44071 without substantive change.

CHAPTER 12. PENALTIES

§ 44300. Citations

44300. (a) If, upon investigation, the department has probable cause to believe that a licensed smog check station, a test-only station contractor, or a fleet owner licensed under Article 8 (commencing with Section 43050) of Chapter 5 has violated this title, or any regulation adopted pursuant to this title, the department may issue a citation to the licensee, contractor, or fleet owner. The citation shall specify the nature of the violation and may specify a civil penalty assessed by the department pursuant to Section 44302 or 44303.

(b) If, upon investigation, the department has probable cause to believe that a qualified smog check technician has violated Section 42503, 42751, 42903 to 42904, inclusive, 42950 to 42952, inclusive, or 43150, or any regulation of the department adopted pursuant to this title, the department may issue a citation to the technician. The citation shall specify the nature of the violation and, in addition, whichever of the following applies:

(1) For a first citation, the smog check technician shall successfully complete one or more retraining courses prescribed by the department pursuant to Section 43254.

(2) For a second citation, the smog check technician shall successfully complete one or more retraining courses prescribed by the department pursuant to Section 43254 and the technician shall perform inspections or repairs pursuant to this title under the direction of a technician in good standing, as defined by the department.

(3) For a third citation, the smog check technician shall successfully complete an advanced retraining course prescribed by the department and shall perform no inspection or repair pursuant to this title until that completion.

(4) For a fourth citation, the smog check technician's qualification may be permanently revoked.

(c) The citation shall be served pursuant to subdivision (c) of Section 11505 of the Government Code.

Comment. Section 44300 continues former Health and Safety Code Section 44050 without substantive change.

§ 44301. General civil penalty amount

44301. (a) Except as otherwise provided in Sections 44302 and 44303, any person who violates this title, or any order, rule, or regulation of the department adopted pursuant to this title, is liable for a civil penalty of not less than one hundred fifty dollars (\$150) and not more than two thousand five hundred dollars (\$2,500) for each day in which each violation occurs.

(b) The penalties specified in subdivision (a) do not apply to an owner or operator of a motor vehicle, except an owner or operator who does any of the following:

(1) Obtains, or who attempts to obtain, a certificate of compliance, noncompliance or a repair cost waiver, or an economic hardship extension without complying with Sections 43903 to 42905, inclusive, and 42950 to 42952, inclusive.

(2) Obtains, or attempts to obtain, a certificate of compliance, a repair cost waiver, or economic hardship extension by means of fraud, including, but not limited to, offering or giving any form of financial or other inducement to any person for the purpose of obtaining a certificate of compliance for a vehicle that has not been tested or has been tested improperly.

(3) Registers a motor vehicle at an address other than the owner's or operator's residence address for the purpose of avoiding the requirements of this title.

(4) Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Sections 43903 to 42905, inclusive, and 42950 to 42952, inclusive, or Article 2 (commencing with Section 43650) of Chapter 7.

Comment. Subdivision (a) of Section 44301 continues the first sentence of former Health and Safety Code Section 44056(a) without substantive change. Subdivision (b) of Section 44301 continues Health and Safety Code Section 44056(b) without substantive change.

§ 44302. Specified penalties for violations of this chapter

44302. The civil penalty for a violation of the specified provisions of this title is as follows:

Section	Short Description of Violation	Civil Penalty	
		Minimum	Maximum
42501	Smog check estimates and invoices.....	\$ 50	\$ 500
42751	No emission control system inspection, no emissions test, or inspection test procedures	250	1,500
42753	Unlicensed smog check station.....	250	1,500
42903 & 42950 to 42952, inclusive	Improper issuance of certificate, including economic hardship extension certificate	150	1,000
42503	Failure to follow established repair procedures	150	1,000
42953	Cost limit or economic hardship extension requirement.....	150	1,000
43251	Test/repair by unlicensed smog check station or nonqualified smog check technician	250	1,500
43150	Qualified smog check technician required.....	250	500

1	43201	Smog check station requirement, test on condition of		
2		mandatory repair, written estimate requirements	250	1,500
3	43350	Smog check station certified equipment requirement.....	150	1,500
4	44002	Sale, transfer, or purchase of certificate, including		
5		economic hardship extension certificate, and certificate or		
6		economic hardship extension charges.....	250	1,500

Comment. Section 44302 continues former Health and Safety Code Section 44051 without substantive change.

§ 44303. Specified penalties for violation of regulations

44303. The civil penalty for a violation of the specified Sections of Title 16 of the California Code of Regulations is as follows:

Section	Short Description of Violation	Civil Penalty	
		Minimum	Maximum
3340.10	Unlicensed operation of smog check station.....	\$250	\$1,500
3340.15	Smog check station general requirements.....	100	500
3340.16	Smog check station equipment and testing procedures.....	150	1,000
3340.16.5	Smog check station equipment and testing procedures.....	150	1,000
3340.17	Smog check station equipment maintenance and calibration..	150	1,000
3340.22	Smog check station sign requirement.....	100	500
3340.22.1	Sign restrictions.....	100	500
3340.23	Smog check cease operations.....	250	1,500
3340.25	Licensed inspector requirement	150	1,000
3340.30	Qualified mechanic's training and certification requirement ..	100	500
3340.35	Certification of compliance and noncompliance requirement.	250	1,500
3340.37	NOx device/sticker requirement.....	100	500
3340.41	Inspection/test/repair requirement.....	150	1,000
3340.41.3	Invoice requirements	100	500
3340.42	Inspection standards, test procedures, and exhaust		
	emissions requirement	100	500

Comment. Section 44303 continues former Health and Safety Code Section 44051.5 without change.

§ 44304. Civil penalty amount for first time violator

44304. In assessing a civil penalty pursuant to Section 44300 against a person who has not previously been cited for a violation of the same statute or regulation, the department shall fix the penalty at an amount within the minimum and maximum penalties specified in Section 44302 or 44303, as the case may be, for each violation.

Comment. Section 44304 continues former Health and Safety Code Section 44050.5 without substantive change.

§ 44305. Multiple violations

44305. (a) When a citation lists more than one violation, the amount of the civil penalty assessed shall be stated separately for each statute and regulation violated.

(b) When a citation lists more than one violation arising from a single motor vehicle inspection or repair, the total penalties assessed shall not exceed two thousand five hundred dollars (\$2,500).

1 **Comment.** Section 44305 continues former Health and Safety Code Section 44052 without
2 change.

3 **§ 44306. Repair cost waivers or economic hardship extension**

4 44306. Any person who obtains or attempts to obtain a repair cost waiver, or economic
5 hardship extension pursuant to this title by falsifying information shall be subject to a civil
6 penalty of not less than one hundred fifty dollars (\$150) and not more than one thousand
7 dollars (\$1,000), and shall be made ineligible for receiving any repair assistance of any
8 kind pursuant to this title.

9 **Comment.** Section 44306 continues former Health and Safety Code Section 44056(c)
10 without substantive change.

11 **§ 44307. Considerations in assessing civil penalty**

12 44307. In assessing a civil penalty pursuant to a citation issued pursuant to Section
13 44300, the director shall give due consideration to the gravity of the violation, including,
14 but not limited to, a consideration of whether any of the following apply to the licensee:

- 15 (a) A failure to perform work for which money was received.
16 (b) The making of any false or misleading statement in order to induce a person to
17 authorize repair work or pay money.
18 (c) The commission of numerous or repeated violations.
19 (d) A failure to make restitution to customers affected by the licensee's violation.

20 **Comment.** Section 44307 continues former Health and Safety Code Section 44054 without
21 substantive change.

22 **§ 44308. Authority to bring action to recover civil penalty**

23 44308. Any action to recover civil penalties shall be brought by the Attorney General in
24 the name of the state on behalf of the department, or may be brought by any district
25 attorney, city attorney, or attorney for a district.

26 **Comment.** Section 44308 continues the second sentence of former Health and Safety Code
27 Section 44056(a) without change.

28 **§ 44309. Prosecution as misdemeanor**

29 44309. Any person who violates this title, or any order, rule, or regulation of the
30 department adopted pursuant to this title, is guilty of a misdemeanor and shall be punished
31 by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more
32 than six months, or by both, in lieu of the imposition of the civil penalties.

33 **Comment.** Section 44309 continues former Health and Safety Code Section 44058 without
34 substantive change.

35 **§ 44310. Injunction of continuing violation**

36 44310. (a) A continuing violation of any provision of this title, or any order, rule, or
37 regulation of the department adopted pursuant to this title, may be enjoined by the superior
38 court of the county in which the violation is occurring. The action shall be brought by the
39 attorney general in the name of the state on behalf of the department, or may be brought by
40 any district attorney, city attorney, or attorney for a district. An action brought under this
41 section shall conform to the requirements of Chapter 3 (commencing with Section 525) of

1 Title 7 of Part 2 of the Code of Civil Procedure, except that it shall not be necessary to
2 show lack of an adequate remedy at law or to show irreparable damage or loss.

3 (b) In addition, if it is shown that the respondent continues, or threatens to continue, to
4 violate any provision of this title, or any order, rule, or regulation of the department
5 adopted pursuant to this title, it shall be sufficient proof to warrant the immediate granting
6 of a temporary restraining order.

7 **Comment.** Section 44310 continues former Health and Safety Code Section 44057 without
8 substantive change. The former unnumbered paragraphs have been designated as
9 subdivisions.

10 **§ 44311. Request for hearing**

11 44311. (a) Any person issued a citation pursuant to Section 44300 may request a hearing
12 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
13 Title 2 of the Government Code. A request for a hearing shall be submitted in writing
14 within 30 days of service of the citation, and shall be delivered to the office of the
15 department in Sacramento. Hearings and related procedures under this section shall be
16 conducted in the same manner as proceedings for adjudication of an accusation under that
17 Chapter 5, except as otherwise specified in this chapter.

18 (b) If, within 30 days from service of the citation, the licensee or fleet owner licensed
19 pursuant to Article 8 (commencing with Section 43050) of Chapter 5 or qualified mechanic
20 fails to request a hearing, the citation shall be deemed the final order of the department.

21 (c) As it applies to this chapter, the service required in Section 11505 of the Government
22 Code includes service personally, by registered mail, or by courier with receipt of delivery.

23 **Comment.** Section 44311 continues former Health and Safety Code Section 44053 without
24 substantive change.

25 **§ 44312. Denial and nonrenewal of license**

26 44312. (a) Any failure by an applicant for a license or for the renewal of a license, or by
27 any partner, officer, or director thereof, to comply with the final order of the department for
28 the payment of civil penalties, or to pay the amount specified in a settlement executed by the
29 applicant and the Director of the Department of Consumer Affairs, shall result in denial of a
30 license or of the renewal of the license. The department shall not allow the issuance of any
31 certificate of compliance or noncompliance by a licensee until all civil penalties which have
32 become final, or amounts agreed to in a settlement, have been paid by the licensee.

33 (b) The department may deny an application for the renewal of a test station or repair
34 station license if the applicant, or any partner, officer, or director thereof, has failed to pay
35 any civil penalty in accordance with this chapter.

36 **Comment.** Section 44312 continues former Health and Safety Code Section 44055 without
37 substantive change.

38 **§ 44313. Perjury**

39 44313. The willful making of any false statement or entry with regard to a material matter
40 in any oath, affidavit, certificate of compliance or noncompliance, or application form
41 which is required by this title or Chapter 20.3 (commencing with Section 9880) of Division
42 3 of the Business and Professions Code, constitutes perjury and is punishable as provided
43 in the Penal Code.

44 **Comment.** Section 44313 continues former Health and Safety Code Section 44059 without
45 substantive change.

1 CHAPTER 13. LICENSE DENIAL, SUSPENSION, AND REVOCATION

2 **§ 44400. Director's powers**

3 44400. Any license issued under this title and the regulations adopted pursuant to it may
4 be suspended or revoked by the director. The director may refuse to issue a license to any
5 applicant for the reasons set forth in Section 44405. The proceedings under this chapter
6 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part
7 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the
8 powers granted therein.

9 **Comment.** Section 44400 continues former Health and Safety Code Section 44072 without
10 substantive change.

11 **§ 44401. Disciplinary actions**

12 44401. The director may take disciplinary action against any licensee after a hearing as
13 provided in this chapter by any of the following:

- 14 (a) Imposing probation upon terms and conditions to be set forth by the director.
15 (b) Suspending the license.
16 (c) Revoking the license.

17 **Comment.** Section 44401 continues former Health and Safety Code Section 44072.4
18 without change.

19 **§ 44402. Director's jurisdiction not affected by suspension or surrender of license**

20 44402. The expiration or suspension of a license by operation of law or by order or
21 decision of the director or a court of law, or the voluntary surrender of a license by a
22 licensee shall not deprive the director of jurisdiction to proceed with any investigation of, or
23 action or disciplinary proceedings against, the licensee, or to render a decision suspending
24 or revoking the license.

25 **Comment.** Section 44402 continues former Health and Safety Code Section 44072.6
26 without change.

27 **§ 44403. Time limits**

28 44403. All accusations against licensees shall be filed within three years after the act or
29 omission alleged as the ground for disciplinary action, except that with respect to an
30 accusation alleging a violation of subdivision (f) of Section 44407, the accusation may be
31 filed within two years after the discovery by the bureau of the alleged facts constituting the
32 fraud or misrepresentation prohibited by that section.

33 **Comment.** Section 44403 continues former Health and Safety Code Section 44072.7
34 without substantive change.

35 **§ 44404. Surrender of license**

36 44404. Upon the effective date of any order of suspension or revocation of any license
37 governed by this title, the licensee shall surrender the license to the director.

38 **Comment.** Section 44404 continues former Health and Safety Code Section 44072.5
39 without substantive change.

1 **§ 44405. Grounds for denial of license**

2 44405. The director may deny a license if the applicant, or any partner, officer, or
3 director thereof, does any of the following:

4 (a) Fails to meet the qualifications established by the bureau pursuant to Chapter 5
5 (commencing with Section 42700) and Chapter 6 (commencing with Section 43100) and
6 the regulations adopted for the issuance of the license applied for.

7 (b) Was previously the holder of a license issued under this title, which license has been
8 revoked and never reissued or which license was suspended and the terms of the
9 suspension have not been fulfilled.

10 (c) Has committed any act which, if committed by any licensee, would be grounds for
11 the suspension or revocation of a license issued pursuant to this title.

12 (d) Has committed any act involving dishonesty, fraud, or deceit whereby another is
13 injured or whereby the applicant has benefited.

14 (e) Has acted in the capacity of a licensed person or firm under this title without having a
15 license therefor.

16 (f) Has entered a plea of guilty or nolo contendere to, or been found guilty of, or been
17 convicted of a crime substantially related to the qualifications, functions, and duties of the
18 license holder in question, and the time for appeal has elapsed or the judgment of
19 conviction has been affirmed on appeal, irrespective of an order granting probation
20 following the conviction, suspending the imposition of sentence, or of a subsequent order
21 under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty
22 and to enter a plea of not guilty, or setting aside the plea or verdict of guilty, or dismissing
23 the accusation or information.

24 **Comment.** Section 44405 continues former Health and Safety Code Section 44072.1
25 without substantive change.

26 **§ 44406. “Conviction”**

27 44406. A plea or verdict of guilty or a conviction following a plea of nolo contendere is a
28 conviction within the meaning of this chapter. The director may order the license suspended
29 or revoked or may decline to issue a license, when the time for appeal has elapsed, or the
30 judgment of conviction has been affirmed on appeal, or when an order granting probation
31 is made suspending the imposition of sentence irrespective of a subsequent order under
32 Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and to
33 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
34 information, or indictment.

35 **Comment.** Section 44406 continues former Health and Safety Code Section 44072.3
36 without substantive change.

37 **§ 44407. Grounds for suspension, revocation, or other disciplinary action**

38 44407. The director may suspend, revoke, or take other disciplinary action against a
39 license as provided in this chapter if the licensee, or any partner, officer, or director
40 thereof, does any of the following:

41 (a) Violates any Section of this title and the regulations adopted pursuant to it, which
42 related to the licensed activities.

43 (b) Is convicted of any crime substantially related to the qualifications, functions, and
44 duties of the license holder in question.

45 (c) Violates any of the regulations adopted by the director pursuant to this title.

46 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.

- (e) Has misrepresented a material fact in obtaining a license.
- (f) Aids or abets unlicensed persons to evade the provisions of this title.
- (g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.
- (h) Violates or attempts to violate the provisions of this title relating to the particular activity for which he or she is licensed.

Comment. Section 44407 continues former Health and Safety Code Section 44072.2 without substantive change.

§ 44408. Knowing sale of fraudulently certified vehicle

44408. If a motor vehicle dealer sells any used vehicle, knowing that the vehicle has been fraudulently certified, that act shall be additional grounds for suspension or revocation pursuant to Section 11705 of the Vehicle Code. A dealer's license so revoked shall not be reinstated for any reason for a period of at least five years.

Comment. Section 44408 continues former Health and Safety Code Section 44072.10(b) without substantive change.

§ 44409. Revocation of license for fraudulent certification

44409. The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent certification of vehicles. A fraudulent certification includes, but is not limited to, all of the following:

- (a) Clean piping, as defined by the department.
- (b) Tampering with a vehicle emission control system or test analyzer system.
- (c) Intentional or willful violation of this title or any regulation, standard, or procedure of the department implementing this title.

Comment. Section 44409 continues former Health and Safety Code Section 44072.10(d) without substantive change.

§ 44410. Citation and revocation for fraudulent certification on premises

44410. The department shall issue a citation to a smog check station licensee if any fraudulent certification of vehicles occurs on the premises of the station. If, within two years of the issuance of a citation, any fraudulent certification of vehicles occurs at the station, the department shall revoke the station's license. The department shall, pending any hearing on revocation under Sections 44413 and 44415, temporarily suspend any smog check station's or technician's license for not more than 60 days.

Comment. Section 44410 continues former Health and Safety Code Section 44072.10(c) without substantive change.

§ 44411. Revocation or suspension of additional licenses

44411. When a license has been revoked or suspended following a hearing under this chapter, any additional license issued under this title in the name of the licensee may be likewise revoked or suspended by the director.

Comment. Section 44411 continues former Health and Safety Code Section 44072.8 without substantive change.

1 **§ 44412. Temporary suspension of license**

2 44412. Notwithstanding Sections 44400 and 44401, the director, or the director's
3 designee, may, pending a hearing conducted pursuant to subdivision (b) of Section 44413,
4 temporarily suspend any smog check station or technician's license issued under this title,
5 for a period not to exceed 60 days, if the department determines that the licensee's conduct
6 would endanger the public health, safety, or welfare before the matter could be heard
7 pursuant to Section 44413, based on reasonable evidence of any of the following:

8 (a) Fraud.

9 (b) Tampering.

10 (c) Intentional or willful violation of this title or any regulation, standard, or procedure of
11 the department implementing this title.

12 (d) A pattern or regular practice of violating this title or any regulation, standard, or
13 procedure of the department implementing this title.

14 **Comment.** Section 44412 continues former Health and Safety Code Section 44072.10(a)
15 without substantive change.

16 **§ 44413. Temporary suspension procedures**

17 44413. (a) A hearing shall be held and a decision issued within 60 days after the date on
18 which the notice of the temporary suspension was provided unless the time for the hearing
19 has been extended, or the right to a hearing has been waived, by the licensee.

20 (b) The hearing shall be conducted in accordance with Chapter 5 (commencing with
21 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or by court
22 order.

23 (c) The department shall adopt, by regulation, procedures to ensure that any affected
24 licensee is provided adequate notice and opportunity to be heard prior to issuing an order
25 temporarily suspending a license under Section 44410, or 44412.

26 **Comment.** Subdivision (a) of Section 44413 continues the second sentence of former
27 Health and Safety Code Section 44072.10(e) without substantive change. Subdivisions (b)
28 and (c) of Section 44413 continue former Health and Safety Code Section 44072.10(f)-(g)
29 without substantive change.

30 **§ 44414. Reinstatement or reissuance of licenses**

31 44414. After suspension of the license upon any of the grounds set forth in this chapter,
32 the director may reinstate the license upon proof of compliance by the applicant with all
33 provisions of the decision as to reinstatement. After revocation of a license upon any of the
34 grounds set forth in this chapter, the license shall not be reinstated or reissued within a
35 period of one year after the effective date of revocation.

36 **Comment.** Section 44414 continues former Health and Safety Code Section 44072.9
37 without substantive change.

38 **§ 44415. No reinstatement in specified circumstances**

39 44415. Once a license has been revoked for a smog check station or technician under
40 Section 44409, 44410, or 44412, the license shall not be reinstated for any reason.

41 **Comment.** Section 44415 continues the first sentence of former Health and Safety Code
42 Section 44072.10(e) without substantive change.

43 ☞ **Staff Note.** This section's reference to Health and Safety Code Section 44072.10(a)
44 (proposed Section 44412) appears to be erroneous. That subdivision provides for suspension,

not revocation as this section implies. The staff would like to receive input on whether the reference to subdivision (a) should be continued.

§ 44416. Refusal to issue or renew

44416. The department may refuse to issue or renew a license for a smog check station or technician who is subject to a 60-day suspension pursuant to Section 44410 or 44412.

Comment. Section 44416 continues former Health and Safety Code Section 44072.11(a) without substantive change.

§ 44417. License not a vested right

44417. Any smog check station or technician's license granted by the department is a privilege and not a vested right, and may be revoked or suspended by the department for any of the reasons specified in Section 44405 or on evidence that the station or technician is not in compliance with any of the requirements of Section 44416.

Comment. Section 44417 continues former Health and Safety Code Section 44072.11(b) without substantive change.

☞ **Staff Note. (1)** The reference to "the requirements of subdivision (a)" appears to be erroneous. Subdivision (a) does not set out any requirements. The staff would like to receive input on how to correct this error.

(2) Health and Safety Code Sections 44250 to 44257 never became operative and have not been continued. These sections are subject to an operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32; Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 415-17 (1998).

(3) Health and Safety Code Section 44251 presents the same issue as that discussed in relation to Health and Safety Code Section 44013.5. See the Staff Note following proposed Section 42752. Section 44251 was added by a provision that never became operative. It was later amended, in a bill that did not address the section's unsatisfied operation contingency. See 1996 Cal. Stat. ch. 1155, § 1.1. This raises an interpretation problem. When the Legislature amended the section (which had not yet been added because of the failed contingency) did it intend to simply change the language of the section while preserving the operation contingency, or did it intend to add the section, as amended, free of the operation contingency? The staff believes that the former is more likely.

PART 6. AIR TOXICS "HOT SPOTS" INFORMATION AND ASSESSMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title, Legislative Findings and Declarations

§ 45000. Short title

45000. This part shall be known and may be cited as the Air Toxics "Hot Spots" Information and Assessment Act of 1987.

Comment. Section 45000 continues former Health and Safety Code Section 44300 without change.

§ 45001. Legislative findings and declarations

45001. The Legislature finds and declares all of the following:

(a) In the wake of recent publicity surrounding planned and unplanned releases of toxic chemicals into the atmosphere, the public has become increasingly concerned about toxics in the air.

(b) The Congressional Research Service of the Library of Congress has concluded that 75 percent of the United States population lives in proximity to at least one facility that manufactures chemicals. An incomplete 1985 survey of large chemical companies conducted by the Congressional Research Service documented that nearly every chemical plant studied routinely releases into the surrounding air significant levels of substances proven to be or potentially hazardous to public health.

(c) Generalized emissions inventories compiled by air pollution control districts and air quality management districts in California confirm the findings of the Congressional Research Service survey as well as reveal that many other facilities and businesses which do not actually manufacture chemicals do use hazardous substances in sufficient quantities to expose, or in a manner that exposes, surrounding populations to toxic air releases.

(d) These releases may create localized concentrations or air toxics “hot spots” where emissions from specific sources may expose individuals and population groups to elevated risks of adverse health effects, including, but not limited to, cancer and contribute to the cumulative health risks of emissions from other sources in the area. In some cases where large populations may not be significantly affected by adverse health risks, individuals may be exposed to significant risks.

(e) Little data is currently available to accurately assess the amounts, types, and health impacts of routine toxic chemical releases into the air. As a result, there exists significant uncertainty about the amounts of potentially hazardous air pollutants which are released, the location of those releases, and the concentrations to which the public is exposed.

(f) The State of California has begun to implement a long-term program to identify, assess, and control ambient levels of hazardous air pollutants, but additional legislation is needed to provide for the collection and evaluation of information concerning the amounts, exposures, and short- and long-term health effects of hazardous substances regularly released to the surrounding atmosphere from specific sources of hazardous releases.

(g) In order to more effectively implement control strategies for those materials posing an unacceptable risk to the public health, additional information on the sources of potentially hazardous air pollutants is necessary.

(h) It is in the public interest to ascertain and measure the amounts and types of hazardous releases and potentially hazardous releases from specific sources that may be exposing people to those releases, and to assess the health risks to those who are exposed.

Comment. Section 45001 continues former Health and Safety Code Section 44301 without change.

Article 2. Definitions

§ 45050. Application of definitions

45050. The definitions in this article govern the construction of this part.

Comment. Section 45050 continues former Health and Safety Code Section 44302 without substantive change.

§ 45055. “Air release”

45055. “Air release” means any activity that may cause the issuance of air contaminants, including the actual or potential spilling, leaking, pumping, pouring, emitting, emptying,

discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the ambient air and that results from the routine operation of a facility or that is predictable, including, but not limited to, continuous and intermittent releases and predictable process upsets or leaks.

Comment. Section 45055 continues the definition of “air release” provided in former Health and Safety Code Section 44303 without substantive change. The definition of “release” provided in former Health and Safety Code Section 44303 is continued in Section 45085.

§ 45060. “Facility”

45060. “Facility” means every structure, appurtenance, installation, and improvement on land which is associated with a source of air releases or potential air releases of a hazardous material.

Comment. Section 45060 continues former Health and Safety Code Section 44304 without change.

§ 45065. “Health risk assessment”

45065. “Health risk assessment” means a detailed comprehensive analysis prepared pursuant to Section 45600 to evaluate and predict the dispersion of hazardous substances in the environment and the potential for exposure of human populations and to assess and quantify both the individual and population wide health risks associated with those levels of exposure.

Comment. Section 45065 continues former Health and Safety Code Section 44306 without substantive change.

§ 45070. “Operator”

45070. “Operator” means the person who owns or operates a facility or part of a facility.

Comment. Section 45070 continues former Health and Safety Code Section 44307 without change.

§ 45075. “Plan”

45075. “Plan” means the emissions inventory plan which meets the conditions specified in Section 45400.

Comment. Section 45075 continues former Health and Safety Code Section 44308 without substantive change.

§ 45080. “Prioritization scores”

45080. “Prioritization score” means a facility’s numerical score for cancer health effects or noncancer health effects, as determined by the district pursuant to Section 44500 or 44501 in a manner consistent with facility prioritization guidelines prepared by the California Air Pollution Control Officers Association and approved by the state board.

Comment. Section 45080 continues former Health and Safety Code Section 44344.4(c) without substantive change.

§ 45085. “Release”

45085. “Release” means air release.

1 **Comment.** Section 45085 is new. It is consistent with former Health and Safety Code
2 Section 44303. See Section 45055 (“air release”).

3 **§ 45090. “Report”**

4 45090. “Report” means the emissions inventory report specified in Section 45301.

5 **Comment.** Section 45090 continues former Health and Safety Code Section 44309 without
6 change.

7 Article 3. Application of Part

8 **§ 45100. Application of part to existing facilities**

9 45100. This part applies to the following:

10 (a) Any facility which manufactures, formulates, uses, or releases any of the substances
11 listed pursuant to Section 45101 or any other substance which reacts to form a substance
12 listed in Section 45101 and which releases or has the potential to release total organic
13 gases, particulates, or oxides of nitrogen or sulfur in the amounts specified in Section
14 45102.

15 (b) Except as provided in Section 45103, any facility which is listed in any current toxics
16 use or toxics air emission survey, inventory, or report released or compiled by a district. A
17 district may, with the concurrence of the state board, waive the application of this part
18 pursuant to this subdivision for any facility which the district determines will not release
19 any substance listed pursuant to Section 45101 due to a shutdown or a process change.

20 **Comment.** Section 45100 continues former Health and Safety Code Section 44320 without
21 substantive change.

22 **§ 45101. List of substances presenting threat to public health**

23 45101. For the purposes of Section 45100, the state board shall compile and maintain a
24 list of substances that contains, but is not limited to, all of the following:

25 (a) Substances identified by reference in paragraph (1) of subdivision (b) of Section 6382
26 of the Labor Code and substances placed on the list prepared by the National Toxicology
27 Program issued by the United States Secretary of Health and Human Services pursuant to
28 paragraph (4) of Section 262 of Public Law 95-622 of 1978. For the purposes of this
29 subdivision, the state board may remove from the list any substance which meets both of
30 the following criteria:

31 (1) No evidence exists that it has been detected in air.

32 (2) The substance is not manufactured or used in California, or, if manufactured or used
33 in California, because of the physical or chemical characteristics of the substance or the
34 manner in which it is manufactured or used, there is no possibility that it will become
35 airborne.

36 (b) Carcinogens and reproductive toxins referenced in or compiled pursuant to Section
37 25249.8 of the Health and Safety Code, except those which meet both of the criteria
38 identified in subdivision (a).

39 (c) The candidate list of potential toxic air contaminants and the list of designated toxic air
40 contaminants prepared by the state board pursuant to Article 4 (commencing with Section
41 31750) of Chapter 4 of Part 2, including, but not limited to, all substances currently under
42 review and scheduled or nominated for review and substances identified and listed for
43 which health effects information is limited.

(d) Substances for which an information or hazard alert has been issued by the repository of current data established pursuant to Section 147.2 of the Labor Code.

(e) Substances reviewed, under review, or scheduled for review as air toxics or potential air toxics by the Office of Air Quality Planning and Standards of the Environmental Protection Agency, including substances evaluated in all of the following categories or their equivalent: preliminary health and source screening, detailed assessment, intent to list, decision not to regulate, listed, standard proposed, and standard promulgated.

(f) Any additional substances recognized by the state board as presenting a chronic or acute threat to public health when present in the ambient air, including, but not limited to, any neurotoxins or chronic respiratory toxins not included within subdivision (a), (b), (c), (d), or (e).

Comment. Section 45101 continues former Health and Safety Code Section 44321 without substantive change.

§ 45102. Timetable for application of part to facilities identified in Section 45100

45102. This part applies to facilities specified in subdivision (a) of Section 45100 in accordance with the following schedule:

(a) For those facilities that release, or have the potential to release, 25 tons per year or greater of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective on July 1, 1988.

(b) For those facilities that release, or have the potential to release, more than 10 but less than 25 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective July 1, 1989.

(c) For those facilities that release, or have the potential to release, less than 10 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, the state board shall, on or before July 1, 1990, prepare and submit a report to the Legislature identifying the classes of those facilities to be included in this part and specifying a timetable for their inclusion.

Comment. Section 45102 continues former Health and Safety Code Section 44322 without substantive change.

☞ **Staff Note.** This section appears to be obsolete. The dates stated in subdivisions (a) and (b) for facilities releasing more than 10 tons per year of the specified emissions, have already passed. Subdivision (c) requires the submission of a report to the Legislature proposing dates for application of the part to facilities releasing less than 10 tons of the specified pollutants per year. The staff would like to receive input on the following questions: (1) Was the report required by subdivision (c) submitted? (2) Have the dates proposed for application of the part to all of the classes of facilities identified in the report passed? (3) Does the section continue to serve a useful purpose?

§ 45103. Industry-wide emissions inventory and health risk assessment

45103. A district may prepare an industrywide emissions inventory and health risk assessment for facilities specified in subdivision (b) of Section 45100 and subdivisions (a) and (b) of Section 45102, and shall prepare an industrywide emissions inventory for the facilities specified in subdivision (c) of Section 45102, in compliance with this part for any class of facilities that the district finds and determines meets all of the following conditions:


(a) All facilities in the class fall within one four-digit Standard Industrial Classification Code.

(b) Individual compliance with this part would impose severe economic hardships on the majority of the facilities within the class.

(c) The majority of the class is composed of small businesses.

(d) Releases from individual facilities in the class can easily and generically be characterized and calculated.

Comment. Section 45103 continues former Health and Safety Code Section 44323 without substantive change.

 **Staff Note.** The staff believes that the requirements of this section were intended as a substitute for the requirements applicable to individual facility operators within the specified class. However, there is no such exemption for individual operators. Consequently, rather than creating a substitute, this section appears to create an overlay, with the district conducting industry-wide inventories and assessments and individual operators still subject to the requirements of the part. The staff would like to receive input on the following questions: (1) Is the section intended to provide exemptions for individual operators who are the subject of a district's industry-wide inventory and health assessment? (2) If so, what should the scope of the exemption be?

§ 45104. Pesticide exemption

45104. This part does not apply to any facility where economic poisons are employed in their pesticidal use, unless that facility was subject to district permit requirements on or before August 1, 1987. As used in this section, "pesticidal use" does not include the manufacture or formulation of pesticides.

Comment. Section 45104 continues former Health and Safety Code Section 44324 without change.

§ 45105. Solid waste disposal facility

45105. Any solid waste disposal facility in compliance with Sections 38000 to 38008, inclusive, is in compliance with the emissions inventory requirements of this part.

Comment. Section 45105 continues former Health and Safety Code Section 44325 without substantive change.

§ 45106. Relationship of part to other requirements


45106. This part does not prevent any district from establishing more stringent criteria and requirements than are specified in this part for approval of emissions inventories and requiring the preparation and submission of health risk assessments. Nothing in this part limits the authority of a district under any other provision of law to assess and regulate releases of hazardous substances.

Comment. Section 45106 continues former Health and Safety Code Section 44365(b) without substantive change.

§ 45107. Requirements of part as permit condition

45107. Every district shall, by regulation, adopt the requirements of this part as a condition of every permit issued pursuant to Title 7 (commencing with Section 38700) of Part 4 for all new and modified facilities.

Comment. Section 45107 continues former Health and Safety Code Section 44382 without substantive change.

 **Staff Note.** Health and Safety Code Section 44384 is obsolete and has not been continued. The section states a specific operative date for itself and Section 44380 (July 1, 1988).

1 Article 4. Responsibilities and Authority of State Board and Districts

2 **§ 45150. State board oversight**

3 45150. If the state board finds and determines that a district's actions pursuant to this part
4 do not meet the requirements of this part, the state board may exercise the authority of the
5 district pursuant to this part to approve emissions inventory plans and require the
6 preparation of health risk assessments.

7 **Comment.** Section 45150 continues former Health and Safety Code Section 44365(a)
8 without substantive change.

9 **§ 45151. Use of reports and assessments by state board**

10 45151. The state board shall utilize the reports and assessments developed pursuant to
11 this part for the purposes of identifying, establishing priorities for, and controlling toxic air
12 contaminants pursuant to Chapter 4 (commencing with Section 31600) of Part 2.

13 **Comment.** Section 45151 continues former Health and Safety Code Section 44364 without
14 substantive change.

15 **§ 45152. Annual report of district**

16 45152. (a) Each district shall prepare and publish an annual report which does all of the
17 following:

18 (1) Describes the priorities and categories designated pursuant to Section 44500 and
19 summarizes the results and progress of the health risk assessment program undertaken
20 pursuant to this part.

21 (2) Ranks and identifies facilities according to the degree of cancer risk posed both to
22 individuals and to the exposed population.

23 (3) Identifies facilities which expose individuals or populations to any noncancer health
24 risks.

25 (4) Describes the status of the development of control measures to reduce emissions of
26 toxic air contaminants, if any.

27 (b) The district shall disseminate the annual report to county boards of supervisors, city
28 councils, and local health officers and the district board shall hold one or more public
29 hearings to present the report and discuss its content and significance.

30 **Comment.** Section 45152 continues former Health and Safety Code Section 44363 without
31 substantive change. The reference in subdivision (a) to the date on which the annual report
32 requirement began (July 1, 1991) is obsolete and has not been continued.

33 Article 5. Enforcement

34 **§ 45200. Right of entry for purpose of inspection**

35 45200. In order to verify the accuracy of any information submitted by facilities pursuant
36 to this part, a district or the state board may proceed in accordance with Section 38700.

37 **Comment.** Section 45200 continues former Health and Safety Code Section 44366 without
38 substantive change.

39 **§ 45201. Civil penalties**

40 45201. (a) Any person who fails to submit any information, reports, or statements
41 required by this part, or who fails to comply with this part or with any permit, rule,

1 regulation, or requirement issued or adopted pursuant to this part, is subject to a civil
2 penalty of not less than five hundred dollars (\$500) or more than ten thousand dollars
3 (\$10,000) for each day that the information, report, or statement is not submitted, or that
4 the violation continues.

5 (b) Any person who knowingly submits any false statement or representation in any
6 application, report, statement, or other document filed, maintained, or used for the
7 purposes of compliance with this part is subject to a civil penalty of not less than one
8 thousand dollars (\$1,000) or more than twenty-five thousand dollars (\$25,000) per day for
9 each day that the information remains uncorrected.

10 **Comment.** Section 45201 continues former Health and Safety Code Section 44381 without
11 change.

12 Article 6. Fees

13 § 45250. Fee regulation

14 45250. (a) The state board shall adopt a regulation which does all of the following:

15 (1) Sets forth the amount of revenue which the district must collect to recover the
16 reasonable anticipated cost which will be incurred by the state board and the Office of
17 Environmental Health Hazard Assessment to implement and administer this part.

18 (2) Requires each district to adopt a fee schedule which recovers the costs of the district
19 and which assesses a fee upon the operator of every facility subject to this part, except as
20 specified in subdivision (b) of Section 45304. A district may request the state board to
21 adopt a fee schedule for the district if the district's program costs are approved by the
22 district board and transmitted to the state board by April 1 of the year in which the request
23 is made.

24 (3) Requires any district that has an approved toxics emissions inventory compiled
25 pursuant to this part by August 1 of the preceding year to adopt a fee schedule, as described
26 in paragraph (2), which imposes on facility operators fees which are, to the maximum
27 extent practicable, proportionate to the extent of the releases identified in the toxics
28 emissions inventory and the level of priority assigned to that source by the district pursuant
29 to Section 44500 or 44501.

30 (b) The state board shall review and may amend the fee regulation annually.

31 **Comment.** Section 45250 continues former Health and Safety Code Section 44380(a)-(b)
32 without substantive change. The reference in subdivision (b) to the date after which annual
33 review of the fee regulation is required (August 1, 1992) is obsolete and has not been
34 continued.

35 § 45251. Enforcement of fee requirement

36 45251. The district shall notify each person who is subject to the fee of the obligation to
37 pay the fee. If a person fails to pay the fee within 60 days after receipt of this notice, the
38 district, unless otherwise provided by district rules, shall require the person to pay an
39 additional administrative civil penalty. The district shall fix the penalty at not more than 100
40 percent of the assessed fee, but in an amount sufficient in its determination, to pay the
41 district's additional expenses incurred by the person's noncompliance. If a person fails to
42 pay the fee within 120 days after receipt of this notice, the district may initiate permit
43 revocation proceedings. If any permit is revoked, it shall be reinstated only upon full
44 payment of the overdue fee plus any late penalty, and a reinstatement fee to cover
45 administrative costs of reinstating the permit.

1 **Comment.** Section 45251 continues former Health and Safety Code Section 44380(c)
2 without substantive change.

3 **§ 45252. Disposition of fee revenue**

4 45252. Each district shall collect the fees assessed pursuant to subdivision (a) of Section
5 45250. After deducting the costs to the district to implement and administer this part, the
6 district shall transmit the remainder to the Controller for deposit in the Air Toxics Inventory
7 and Assessment Account, which is hereby created in the General Fund. The money in the
8 account is available, upon appropriation by the Legislature, to the state board and the Office
9 of Environmental Health Hazard Assessment for the purposes of administering this part.

10 **Comment.** Section 45252 continues former Health and Safety Code Section 44380(d)
11 without substantive change.

12 **§ 45253. Revenue limits**

13 45253. For the 1997-98 fiscal year, air toxics program revenues for the state board and
14 the Office of Environmental Health Hazard Assessment shall not exceed two million dollars
15 (\$2,000,000), and for each fiscal year thereafter, shall not exceed one million three
16 hundred fifty thousand dollars (\$1,350,000). Funding for the Office of Environmental
17 Health Hazard Assessment for conducting risk assessment reviews shall be on a fee-for-
18 service basis.

19 **Comment.** Section 45253 continues former Health and Safety Code Section 44380(e)
20 without substantive change.

21 **§ 45254 Fee exemption**

22 45254 A facility shall be granted an exemption by a district from paying a fee in
23 accordance with Section 45250 if all of the following criteria are met:

24 (a) The facility primarily handles, processes, stores, or distributes bulk agricultural
25 commodities or handles, feeds, or rears livestock.

26 (b) The facility was required to comply with this part only as a result of its particulate
27 matter emissions.

28 (c) The fee schedule adopted by the district or the state board for these types of facilities
29 is not solely based on toxic emissions weighted for potency or toxicity.

30 **Comment.** Section 45254 continues former Health and Safety Code Section 44380.1
31 without substantive change.

32 **§ 45255. Supplemental fees**

33 45255. In addition to the fee assessed pursuant to Section 45250, a supplemental fee may
34 be assessed by the district, the state board, or the Office of Environmental Health Hazard
35 Assessment upon the operator of a facility that, at the operator's option, includes
36 supplemental information authorized by subdivision (b) of Section 45551 in a health risk
37 assessment, if the review of that supplemental information substantially increases the costs
38 of reviewing the health risk assessment by the district, the state board, or the office. The
39 supplemental fee shall be set by the state board in the regulation required by Section 45250
40 and shall be set in an amount sufficient to cover the direct costs to review the information
41 supplied by an operator pursuant to subdivision (b) of Section 45551.

42 **Comment.** Section 45255 continues former Health and Safety Code Section 44380.5
43 without substantive change.

CHAPTER 2. AIR TOXICS EMISSION INVENTORIES

Article 1. Comprehensive Emission Inventory Plans

§ 45300. Submission and approval of plan

45300. (a) The operator of each facility subject to this part shall prepare and submit to the district a proposed comprehensive emissions inventory plan in accordance with the criteria and guidelines adopted by the state board pursuant to Section 45400.

(b) The proposed plan shall be submitted to the district on or before August 1, 1989, except that, for any facility to which subdivision (b) of Section 45102 applies, the proposed plan shall be submitted to the district on or before August 1, 1990. The district shall approve, modify, and approve as modified, or return for revision and resubmission, the plan within 120 days of receipt.

(c) The district shall not approve a plan unless all of the following conditions are met:

(1) The plan meets the requirements established by the state board pursuant to Section 45400.

(2) The plan is designed to produce, from the list compiled and maintained pursuant to Section 45101, a comprehensive characterization of the full range of hazardous materials that are released, or that may be released, to the surrounding air from the facility. Air release data shall be collected at, or calculated for, the primary locations of actual and potential release for each hazardous material. Data shall be collected or calculated for all continuous, intermittent, and predictable air releases.

(3) The measurement technologies and estimation methods proposed provide state-of-the-art effectiveness and are sufficient to produce a true representation of the types and quantities of air releases from the facility.

(4) Source testing or other measurement techniques are employed wherever necessary to verify emission estimates, as determined by the state board and to the extent technologically feasible. All testing devices shall be appropriately located, as determined by the state board.

(5) Data are collected or calculated for the relevant exposure rate or rates of each hazardous material according to its characteristic toxicity and for the emission rate necessary to ensure a characterization of risk associated with exposure to releases of the hazardous material that meets the requirements of Article 3 (commencing with Section 45600) of Chapter 3. The source of all emissions shall be displayed or described.

Comment. Section 45300 continues former Health and Safety Code Section 44340 without substantive change.

☞ **Staff Note.** The first sentence of subdivision (b) specifies deadlines for the submission of plans. These deadline provisions may be obsolete. The staff would like to receive input on two questions: (1) Have these deadlines been met? (2) Do the deadlines still serve a useful purpose?

§ 45301. Implementation of plan and preparation of report

45301. Within 180 days after approval of a plan by the district, the operator shall implement the plan and prepare and submit a report to the district in accordance with the plan. The district shall transmit all monitoring data contained in the approved report to the state board.

Comment. Section 45301 continues former Health and Safety Code Section 44341 without change.

1 **§ 45302. District review of reports**

2 45302. The district shall review the reports submitted pursuant to Section 45301 and
3 shall, within 90 days, review each report, obtain corrections and clarifications of the data,
4 and notify the Office of Environmental Health Hazard Assessment, the Department of
5 Industrial Relations, and the city or county health department of its findings and
6 determinations as a result of its review of the report.

7 **Comment.** Section 45302 continues former Health and Safety Code Section 44343 without
8 substantive change. Enactment of this section codifies Section 142 of the Governor's
9 Reorganization Plan No. 1 of 1991, effective July 17, 1991.

10 **§ 45303. Quadrennial updates**

11 45303. Except as provided in Section 45705, emissions inventories developed pursuant
12 to this chapter shall be updated every four years, in accordance with the procedures
13 established by the state board. Those updates shall take into consideration improvements in
14 measurement techniques and advancing knowledge concerning the types and toxicity of
15 hazardous material released or potentially released.

16 **Comment.** Section 45303 continues former Health and Safety Code Section 44344 without
17 substantive change.

18 **§ 45304. Partial exemption**

19 45304. (a) Except as provided in subdivision (c) and in Section 45305, a facility shall be
20 exempt from further compliance with this part if the facility's prioritization scores for
21 cancer and noncancer health effects are both equal to or less than one, based on the results
22 of the most recent emissions inventory or emissions inventory update. An exempt facility
23 shall no longer be required to pay any fee or submit any report to the district or the state
24 board pursuant to this part.

25 (b) Except for facilities that are exempt from this part pursuant to subdivision (a), a
26 facility for which the prioritization scores for cancer and noncancer health effects are both
27 equal to or less than 10, based on the results of the most recent emissions inventory or
28 emissions inventory update, shall not be required to pay any fee or submit any report to the
29 district or the state board pursuant to this part, except for the quadrennial emissions
30 inventory update required pursuant to Section 45303. A district may, by regulation,
31 establish a fee to be paid by a facility operator in connection with the operator's submission
32 to the district of a quadrennial emissions inventory update pursuant to this subdivision. The
33 fee shall not be greater than one hundred twenty-five dollars (\$125). A district may increase
34 the fee above that amount upon the adoption of written findings that the costs of processing
35 the emission inventory update exceed one hundred twenty-five dollars (\$125). However,
36 the district shall not adopt a fee greater than that supported by the written findings.

37 (c) Notwithstanding subdivision (a) and Section 45305, if a district has good cause to
38 believe that a facility may pose a potential threat to public health and that the facility
39 therefore does not qualify for an exemption claimed by the facility pursuant to subdivision
40 (a), the district may require the facility to document the facility's emissions and health
41 impacts, or the changes in emissions expected to occur as a result of a particular physical
42 change, a change in activities or operations at the facility, or a change in other factors. The
43 district may deny the exemption if the documentation does not support the claim for the
44 exemption.

1 **Comment.** Section 45304 continues former Health and Safety Code Sections 44344.4(a),
2 (b) and (d) without substantive change. Former Health and Safety Code Section 44344.4(c) is
3 continued in Section 45080.

4 **§ 45305. Loss of partial exemption**

5 45305. (a) A facility exempted from this part pursuant to subdivision (a) of Section
6 45304 shall, upon receipt of a notice from the district, again be subject to this part and the
7 operator shall submit an emissions inventory update for those sources and substances for
8 which a physical change in the facility or a change in activities or operations has occurred,
9 as follows:

10 (1) The facility emits a substance newly listed pursuant to Section 45101.

11 (2) A sensitive receptor has been established or constructed within 500 meters of the
12 facility after the facility became exempt.

13 (3) The facility emits a substance for which the potency factor has increased.

14 (b) The operator of a facility exempted from this part pursuant to subdivision (a) of
15 Section 45304 shall submit an emissions inventory update for those sources and substances
16 for which a particular physical change in the facility or a change in activities or operations
17 occurs if, as a result of the particular change, either of the following has occurred:

18 (1) The facility has begun emitting a listed substance not included in the previous
19 emissions inventory.

20 (2) The facility has increased its emissions of a listed substance to a level greater than the
21 level previously reported for that substance, and the increase in emissions exceeds 100
22 percent of the previously reported level.

23 (c) Notwithstanding subdivision (b), a physical change or change in activities or
24 operations at a facility shall not cause the facility to again be subject to this part if all of the
25 following conditions are met:

26 (1) The physical change or change in activities or operations is subject to a district permit
27 program established pursuant to Section 38750.

28 (2) The district conducts an assessment of the potential changes in emissions or their
29 associated risks, whichever the district determines to be appropriate, attributable to the
30 physical change or change in activities or operations and finds that the changes in emissions
31 will not result in a significant risk. A risk assessment conducted pursuant to this paragraph
32 shall comply with subdivision (a) of Section 45551.

33 (3) The district issues a permit for the physical change or change in activities or
34 operations.

35 **Comment.** Section 45305 continues former Health and Safety Code Section 44344.7
36 without substantive change.

37 **§ 45306. Prioritization scores**

38 45306. A district shall redetermine a facility's prioritization score, or evaluate the
39 prioritization score as calculated and submitted by the facility, within 90 days from the date
40 of receipt of a quadrennial emissions inventory update pursuant to Section 45303 or
41 subdivision (b) of Section 45304, within 90 days from the date of receipt of an emissions
42 inventory update submitted pursuant to Section 45305, or within 90 days from the date of
43 receiving notice that a facility has completed the implementation of a plan prepared pursuant
44 to Section 45702.

45 **Comment.** Section 45306 continues former Health and Safety Code Section 44344.6
46 without substantive change.

§ 45307. New facilities

45307. (a) The operator of any new facility that previously has not been subject to this part shall prepare and submit an emissions inventory plan and report.

(b) Notwithstanding subdivision (a), a new facility shall not be required to submit an emissions inventory plan and report if all of the following conditions are met:

(1) The facility is subject to a district permit program established pursuant to Section 38750.

(2) The district conducts an assessment of the potential emissions or their associated risks, whichever the district determines to be appropriate, attributable to the new facility and finds that the emissions will not result in a significant risk. A risk assessment conducted pursuant to this paragraph shall comply with subdivision (a) of Section 45551.

(3) The district issues a permit authorizing construction or operation of the new facility.

Comment. Section 45307 continues former Health and Safety Code Section 44344.5 without substantive change.

👉 **Staff Note.** Should an inventory plan prepared pursuant to this section be submitted to the district for approval as is required under Health and Safety Code Section 44340. If so, what should the deadline for submission be? If not, what should the deadline for submission of the required report be?

Article 2. Trade Secrets

§ 45350. Definitions

45350. As used in this article, “trade secret” and “public record” have the meanings and protections given to them by Section 6254.7 of the Government Code and Section 1060 of the Evidence Code. All information collected pursuant to this chapter, except for data used to calculate emissions data required in the facility diagram, shall be considered “air pollution emission data,” for the purposes of this article.

Comment. Section 45350 continues former Health and Safety Code Section 44346(h) without substantive change.

§ 45351. Required disclosure

45351. (a) If an operator believes that any information required in the facility diagram specified pursuant to subdivision (b) of Section 45400 involves the release of a trade secret, the operator shall nevertheless make the disclosure to the district, and shall notify the district in writing of that belief in the report.

(b) This article does not permit an operator to refuse to disclose the information required pursuant to this part to the district.

Comment. Section 45351 continues former Health and Safety Code Sections 44346(a) and (d) without substantive change. The former unnumbered paragraphs have been designated as subdivisions.

§ 45352. Protection of trade secrets

45352. Subject to this article, the district shall protect from disclosure any trade secret designated as such by the operator, if that trade secret is not a public record.

Comment. Section 45352 continues former Health and Safety Code Section 44346(b) without substantive change.

1 **§ 45353. Disclosure procedure**

2 45353. Upon receipt of a request for the release of information to the public which
3 includes information which the operator has notified the district is a trade secret and which
4 is not a public record, the following procedure applies:

5 (a) The district shall notify the operator of the request in writing by certified mail, return
6 receipt requested.

7 (b) The district shall release the information to the public, but not earlier than 30 days
8 after the date of mailing the notice of the request for information, unless, prior to the
9 expiration of the 30-day period, the operator obtains an action in an appropriate court for a
10 declaratory judgment that the information is subject to protection under this article or for a
11 preliminary injunction prohibiting disclosure of the information to the public and promptly
12 notifies the district of that action.

13 **Comment.** Section 45353 continues former Health and Safety Code Section 44346(c)
14 without substantive change.

15 **§ 45354. Limits on disclosure**

16 45354. Any information determined by a court to be a trade secret, and not a public
17 record pursuant to this article, shall not be disclosed to anyone except an officer or
18 employee of the district, the state, or the United States, in connection with the official
19 duties of that officer or employee under any law for the protection of health, or to
20 contractors with the district or the state and its employees if, in the opinion of the district or
21 the state, disclosure is necessary and required for the satisfactory performance of a
22 contract, for performance of work, or to protect the health and safety of the employees of
23 the contractor.

24 **Comment.** Section 45354 continues former Health and Safety Code Section 44346(e)
25 without substantive change.

26 **§ 45355. Penalties for improper disclosure**

27 45355. Any officer or employee of the district or former officer or employee who, by
28 virtue of that employment or official position, has possession of, or has access to, any
29 trade secret subject to this article, and who, knowing that disclosure of the information to
30 the general public is prohibited by this article, knowingly and willfully discloses the
31 information in any manner to any person not entitled to receive it is guilty of a
32 misdemeanor. Any contractor of the district and any employee of the contractor, who has
33 been furnished information as authorized by this article, shall be considered an employee of
34 the district for purposes of this article.

35 **Comment.** Section 45355 continues former Health and Safety Code Section 44346(f)
36 without substantive change.

37 **§ 45356. Protection of trade secrets for national defense purposes**

38 45356. Information certified by appropriate officials of the United States as necessary to
39 be kept secret for national defense purposes shall be accorded the full protections against
40 disclosure as specified by those officials or in accordance with the laws of the United
41 States.

42 **Comment.** Section 45356 continues former Health and Safety Code Section 44346(g)
43 without substantive change.

Article 3. Responsibilities of State Board

§ 45400. Plan guidelines and criteria

45400. (a) The state board shall, on or before May 1, 1989, in consultation with the districts, develop criteria and guidelines for site-specific air toxics emissions inventory plans which shall be designed to comply with the conditions specified in Section 45300 and which shall include at least all of the following:

(1) For each class of facility, a designation of the hazardous materials for which emissions are to be quantified and an identification of the likely source types within that class of facility. The hazardous materials for quantification shall be chosen from among, and may include all or part of, the list specified in Section 45101.

(2) Requirements for a facility diagram identifying each actual or potential discrete emission point and the general locations where fugitive emissions may occur. The facility diagram shall include any nonpermitted and nonprocess sources of emissions and shall provide the necessary data to identify emission characteristics. An existing facility diagram which meets the requirements of this section may be submitted.

(3) Requirements for source testing and measurement. The guidelines may specify appropriate uses of estimation techniques including, but not limited to, emissions factors, modeling, mass balance analysis, and projections, except that source testing shall be required wherever necessary to verify emission estimates to the extent technologically feasible. The guidelines shall specify conditions and locations where source testing, fence-line monitoring, or other measurement techniques are to be required and the frequency of that testing and measurement.

(4) Appropriate testing methods, equipment, and procedures, including quality assurance criteria.

(5) Specifications for acceptable emissions factors, including, but not limited to, those which are acceptable for substantially similar facilities or equipment, and specification of procedures for other estimation techniques and for the appropriate use of available data.

(6) Specification of the reporting period required for each hazardous material for which emissions will be inventoried.


(7) Specifications for the collection of useful data to identify toxic air contaminants pursuant to Article 4 (commencing with Section 31750) of Chapter 4 of Part 2.

(8) Standardized format for preparation of reports and presentation of data.

(9) A program to coordinate and eliminate any possible overlap between the requirements of this chapter and the requirements of Section 313 of the Superfund Amendment and Reauthorization Act of 1986 (Public Law 99-499).

(b) The state board shall design the guidelines and criteria to ensure that, in collecting data to be used for emissions inventories, actual measurement is utilized whenever necessary to verify the accuracy of emission estimates, to the extent technologically feasible.

Comment. Section 45400 continues former Health and Safety Code Section 44342 without substantive change. The former subdivisions and unnumbered paragraphs have been redesignated.

 **Staff Note.** Subdivision (a) specifies a deadline for satisfying the requirements of this section. The staff would like to receive input on two questions: (1) Have the requirements of the section been satisfied? (2) Does the section still serve a useful purpose?

1 **§ 45401. Compilation of data**

2 45401. (a) On or before July 1, 1989, the state board shall develop a program to compile
3 and make available to other state and local public agencies and the public all data collected
4 pursuant to this chapter.

5 (b) In addition, the state board, on or before March 1, 1990, shall compile, by district,
6 emissions inventory data for mobile sources and area sources not subject to district permit
7 requirements, and data on natural source emissions, and shall incorporate these data into
8 data compiled and released pursuant to this chapter.

9 **Comment.** Section 45401 continues former Health and Safety Code Section 44345 without
10 substantive change.

11 ☞ **Staff Note.** Subdivisions (a) and (b) specify deadlines for satisfying the requirements of
12 those subdivisions. The staff would like to receive input on two questions: (1) Have the
13 requirements of those subdivisions been satisfied? (2) Does the section still serve a useful
14 purpose?

15 **CHAPTER 3. HEALTH RISK ASSESSMENT**

16 Article 1. Prioritization of Facilities

17 **§ 45500. Facilities releasing 25 or more tons of pollutants per year**

18 45500. Within 90 days of completion of the review of all emissions inventory data for
19 facilities specified in subdivision (a) of Section 45102, but not later than December 1,
20 1990, the district shall, based on examination of the emissions inventory data and in
21 consultation with the state board and the State Department of Health Services, prioritize and
22 then categorize those facilities for the purposes of health risk assessment. The district shall
23 designate high, intermediate, and low priority categories and shall include each facility
24 within the appropriate category based on its individual priority. In establishing priorities
25 pursuant to this article, the district shall consider the potency, toxicity, quantity, and
26 volume of hazardous materials released from the facility, the proximity of the facility to
27 potential receptors, including, but not limited to, hospitals, schools, day care centers,
28 worksites, and residences, and any other factors that the district finds and determines may
29 indicate that the facility may pose a significant risk to receptors. The district shall hold a
30 public hearing prior to the final establishment of priorities and categories pursuant to this
31 article.

32 **Comment.** Section 45500 continues former Health and Safety Code Section 44360(a)
33 without substantive change.

34 ☞ **Staff Note.** This section specifies a deadline for the classification of specified facilities.
35 This provision may be obsolete. The staff would like to receive input on two questions: (1)
36 Was the requirement met? (2) Does the deadline provision still serve a useful purpose?

37 **§ 45501. Facilities releasing fewer than 25 tons of pollutants per year**

38 45501. Upon submission of emissions inventory data for facilities specified in
39 subdivisions (b) and (c) of Section 45102, the district shall designate facilities for inclusion
40 within the highest priority category, as appropriate, and any facility so designated shall be
41 subject to Sections 45550 and 45551. In addition, the district may require the operator of
42 any facility to prepare and submit health risk assessments, in accordance with the priorities
43 developed pursuant to Section 45500.

1 **Comment.** Section 45501 continues former Health and Safety Code Section 44360(c)
2 without substantive change.

3 Article 2. Preparation of Health Risk Assessments

4 **§ 45550. Health risk assessments for highest priority facilities**

5 45550. Within 150 days of the designation of priorities and categories pursuant to
6 Section 45500, the operator of every facility that has been included within the highest
7 priority category shall prepare and submit to the district a health risk assessment pursuant to
8 Section 45600. The district may, at its discretion, grant a 30-day extension for submittal of
9 the health risk assessment.

10 **Comment.** Section 45550 continues former Health and Safety Code Section 44360(b)(1)
11 without substantive change.

12 **§ 45551. Guidelines for health risk assessments**

13 45551. (a) Health risk assessments required by this chapter shall be prepared in
14 accordance with guidelines established by the Office of Environmental Health Hazard
15 Assessment. The office shall prepare draft guidelines which shall be circulated to the public
16 and the regulated community and shall adopt risk assessment guidelines after consulting
17 with the state board and the Risk Assessment Committee of the California Air Pollution
18 Control Officers Association and after conducting at least two public workshops, one in the
19 northern and one in the southern part of the state. The adoption of the guidelines is not
20 subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2
21 of the Government Code. The scientific review panel established pursuant to Section 31850
22 shall evaluate the guidelines adopted under this section and shall recommend changes and
23 additional criteria to reflect new scientific data or empirical studies.

24 (b) The guidelines established pursuant to this section shall impose only those
25 requirements on facilities subject to this article and Article 1 (commencing with Section
26 45500) that are necessary to ensure that a required risk assessment is accurate and complete
27 and shall specify the type of site-specific factors that districts may take into account in
28 determining when a single health risk assessment may be allowed under Section 45553.
29 The guidelines shall, in addition, allow the operator of a facility, at the operator's option,
30 and to the extent that valid and reliable data are available, to include for consideration by the
31 district in the health risk assessment any or all of the following supplemental information:

32 (1) Information concerning the scientific basis for selecting risk parameter values that are
33 different than those required by the guidelines and the likelihood distributions that result
34 when alternative values are used.

35 (2) Data from dispersion models, microenvironment characteristics, and population
36 distributions that may be used to estimate maximum actual exposure.

37 (3) Risk expressions that show the likelihood that any given risk estimate is the correct
38 risk value.

39 (4) A description of the incremental reductions in risk that occur when exposure is
40 reduced.


41 (c) To ensure consistency in the use of the supplemental information authorized by
42 paragraphs (1), (2), (3), and (4) of subdivision (b), the guidelines established pursuant to
43 subdivision (a) shall include guidance for use by the districts in considering the
44 supplemental information when it is included in the health risk assessment.

Comment. Section 45551 continues former Health and Safety Code Section 44360(b)(2)-(b)(4) without substantive change.

§ 45552. Limitation on application of guidelines

45552. Nothing contained in this article, Article 2 (commencing with Section 45500), Section 45255.5, or Chapter 4 (commencing with Section 45700) shall be interpreted as requiring a facility operator to prepare a new or revised health risk assessment using the guidelines established pursuant to Section 45551 if the facility operator is required by the district to begin the preparation of a health risk assessment before those guidelines are established.

Comment. Section 45552 continues former Health and Safety Code Section 44360(e) without substantive change.

 **Staff Note.** The reference in Health and Safety Code Section 44360(e) to “guidelines established pursuant to paragraph (2) of subdivision (a) of this section” is erroneous and has been replaced with a reference to the appropriate provision.

§ 45553. Substantially identical facilities

45553. The district shall, except where site specific factors may affect the results, allow the use of a single health risk assessment for two or more substantially identical facilities operated by the same person.

Comment. Section 45553 continues former Health and Safety Code Section 44360(d) without substantive change.

Article 3. Submission and Review of Health Risk Assessments

§ 45600. Submission and review

45600. Each health risk assessment shall be submitted to the district. The district shall make the health risk assessment available for public review, upon request. After preliminary review of the emissions impact and modeling data, the district shall submit the health risk assessment to the Office of Environmental Health Hazard Assessment for review and, within 180 days of receiving the health risk assessment, the office shall submit to the district its comments on the data and findings relating to health effects. The district shall consult with the state board as necessary to adequately evaluate the emissions impact and modeling data contained within the risk assessment.

Comment. Section 45600 continues former Health and Safety Code Section 44361(a) without substantive change. Enactment of this section codifies part of the substance of Section 144 of the Governor’s Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 45601. Use of independent contractors

45601. For the purposes of complying with Sections 45600 to 45603, inclusive, the Office of Environmental Health Hazard Assessment may select a qualified independent contractor to review the data and findings relating to health effects. The office shall not select an independent contractor to review a specific health risk assessment who may have a conflict of interest with regard to the review of that health risk assessment. Any review by an independent contractor shall comply with the following requirements:

- (a) Be performed in a manner consistent with guidelines provided by the office.
- (b) Be reviewed by the office for accuracy and completeness.

(c) Be submitted by the office to the district in accordance with this section 45600.

Comment. Section 45601 continues former Health and Safety Code Section 44361(b) without substantive change. Enactment of this section codifies part of the substance of Section 144 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 45602. Reimbursement of costs

45602. (a) The district shall reimburse the Office of Environmental Health Hazard Assessment or the qualified independent contractor designated by the office pursuant to Section 45601, within 45 days of its request, for its actual costs incurred in reviewing a health risk assessment pursuant to Sections 45600 to 45603, inclusive.

(b) If a district requests the Office of Environmental Health Hazard Assessment to consult with the district concerning any requirement of this part, the district shall reimburse the office, within 45 days of its request, for the costs incurred in the consultation.

Comment. Section 45602 continues former Health and Safety Code Section 44361(c) and (d) without substantive change. Enactment of this section codifies part of the substance of Section 144 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 45603. Staffing requirements

45603. Upon designation of the high priority facilities, as specified in Section 45500, the Office of Environmental Health Hazard Assessment shall evaluate the staffing requirements of Sections 45600 to 45603, inclusive, and may submit recommendations to the Legislature, as appropriate, concerning the maximum number of health risk assessments to be reviewed each year pursuant to Sections 45600 to 45603, inclusive.

Comment. Section 45603 continues former Health and Safety Code Section 44361(e) without substantive change. Enactment of this section codifies part of the substance of Section 144 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 45604. District approval

45604. Taking the comments of the Office of Environmental Health Hazard Assessment into account, the district shall approve or return for revision and resubmission and then approve, the health risk assessment within one year of receipt. If the health risk assessment has not been revised and resubmitted within 60 days of the district's request of the operator to do so, the district may modify the health risk assessment and approve it as modified.

Comment. Section 45604 continues former Health and Safety Code Section 44362(a) without substantive change. Enactment of this section codifies part of the substance of Section 145 of the Governor's Reorganization Plan No. 1 of 1991, effective July 17, 1991.

§ 45605. Notice of significant health risks

45605. Upon approval of the health risk assessment, the operator of the facility shall provide notice to all exposed persons regarding the results of the health risk assessment prepared pursuant to Sections 45600 to 45603, inclusive, if, in the judgment of the district, the health risk assessment indicates there is a significant health risk associated with emissions from the facility. If notice is required under this section, the notice shall include only information concerning significant health risks attributable to the specific facility for which the notice is required. Any notice shall be made in accordance with procedures specified by the district.

1 **Comment.** Section 45605 continues former Health and Safety Code Section 44362(b)
2 without substantive change. Enactment of this section codifies part of the substance of Section
3 145 of the Governor’s Reorganization Plan No. 1 of 1991, effective July 17, 1991.

4 CHAPTER 4. FACILITY TOXIC AIR CONTAMINANT RISK 5 REDUCTION AUDIT AND PLAN

6 **§ 45700. Definitions**

7 45700. For the purposes of this chapter, the following definitions apply:
8 (a) “Airborne toxic risk reduction measure” or “ATRRM” means those in-plant changes
9 in production processes or feedstocks that reduce or eliminate toxic air emissions subject to
10 this part. ATRRMs may include:

- 11 (1) Feedstock modification.
- 12 (2) Product reformulations.
- 13 (3) Production system modifications.
- 14 (4) System enclosure, emissions control, capture, or conversion.
- 15 (5) Operational standards and practices modification.

16 (b) Airborne toxic risk reduction measures do not include measures that will increase risk
17 from exposure to the chemical in another media or that increase the risk to workers or
18 consumers.

19 (c) “Airborne toxic risk reduction audit and plan” or “audit and plan” means the audit and
20 plan specified in Section 45702.

21 **Comment.** Section 45700 continues former Health and Safety Code Section 44390 without
22 substantive change.

23 **§ 45701. Audit and plan required**

24 45701. (a) Whenever a health risk assessment approved pursuant to Chapter 3
25 (commencing with Section 45500) indicates, in the judgment of the district, that there is a
26 significant risk associated with the emissions from a facility, the facility operator shall
27 conduct an airborne toxic risk reduction audit and develop a plan to implement airborne
28 toxic risk reduction measures that will result in the reduction of emissions from the facility
29 to a level below the significant risk level within five years of the date the plan is submitted
30 to the district. The facility operator shall implement measures set forth in the plan in
31 accordance with this chapter.

32 (b) The period to implement the plan required by subdivision (a) may be shortened by the
33 district if it finds that it is technically feasible and economically practicable to implement the
34 plan to reduce emissions below the significant risk level more quickly or if it finds that the
35 emissions from the facility pose an unreasonable health risk.

36 (c) A district may lengthen the period to implement the plan required by subdivision (a)
37 by up to an additional five years if it finds that a period longer than five years will not result
38 in an unreasonable risk to public health and that requiring implementation of the plan within
39 five years places an unreasonable economic burden on the facility operator or is not
40 technically feasible.

41 **Comment.** Section 45701 continues former Health and Safety Code Section 44391(a)-(c)
42 without substantive change.

43 ☞ **Staff Note.** Health and Safety Code Section 44391(e) provides: “The audit and plan
44 shall contain all the information required by Section 44392.” This seems to be superfluous.

1 Section 44392 appears to govern the contents of an audit and plan by its own terms,. Health
2 and Safety Code Section 44391(e) is not continued.

3 **§ 45702. Minimum requirements for audit and plan**

4 45702. A facility operator subject to this chapter shall conduct an airborne toxic risk
5 reduction audit and develop a plan which shall include at a minimum all of the following:

- 6 (a) The name and location of the facility.
- 7 (b) The SIC code for the facility.
- 8 (c) The chemical name and the generic classification of the chemical.
- 9 (d) An evaluation of the ATRRMs available to the operator.
- 10 (e) The specification of, and rationale for, the ATRRMs that will be implemented by the
11 operator. The audit and plan shall document the rationale for rejecting ATRRMs that are
12 identified as infeasible or too costly.
- 13 (f) A schedule for implementing the ATRRMs. The schedule shall meet the time
14 requirements of subdivision (a) of Section 45701 or the time period for implementing the
15 plan set by the district pursuant to subdivision (b) or (c) of Section 45701, whichever is
16 applicable.

17 (g) The audit and plan shall be reviewed and certified as meeting this chapter by an
18 engineer who is registered as a professional engineer pursuant to Section 6762 of the
19 Business and Professions Code, by an individual who is responsible for the processes and
20 operations of the site, or by an environmental assessor registered pursuant to Article 3
21 (commencing with Section 7200) of Chapter 1 of Part 2.

22 **Comment.** Section 45702 continues former Health and Safety Code Section 44392 without
23 change.

24 **§ 45703. Submission and review of plan**

25 45703. The plan shall be submitted to the district, within six months of a district's
26 determination of significant risk, for review of completeness. Operators of facilities that
27 have been notified prior to January 1, 1993, that there is a significant risk associated with
28 emissions from the facility shall submit the plan by July 1, 1993. The district's review of
29 completeness shall include a substantive analysis of the emission reduction measures
30 included in the plan, and the ability of those measures to achieve emission reduction goals
31 as quickly as feasible as provided in subdivisions (a) and (b) of Section 45701.

32 **Comment.** Section 45703 continues former Health and Safety Code Section 44391(f)
33 without substantive change.

34 ☞ **Staff Note.** The second sentence of this section specifies a deadline for the submission
35 of plans. This deadline provision may be obsolete. The staff would like to receive input on
36 two questions: (1) Has this deadline been met? (2) Does the deadline still serve a useful
37 purpose?

38 **§ 45704. Approval or remand of audit and plan**

39 45704. The district shall find the audit and plan to be satisfactory within three months if it
40 meets the requirements of this chapter, including, but not limited to, Section 45703. If the
41 district determines that the audit and plan does not meet those requirements, the district
42 shall remand the audit and plan to the facility specifying the deficiencies identified by the
43 district. A facility operator shall submit a revised audit and plan addressing the deficiencies
44 identified by the district within 90 days of receipt of a deficiency notice.

Comment. Section 45704 continues former Health and Safety Code Section 44391(g) without substantive change.

§ 45705. Emissions inventory updates

45705. Progress on the emission reductions achieved by the plan shall be reported to the district in emissions inventory updates. Emissions inventory updates shall be prepared as required by the audit and plan found to be satisfactory by the district pursuant to Section 45704.

Comment. Section 45705 continues former Health and Safety Code Section 44391(h) without substantive change.

§ 45706. New information

45706. If new information becomes available after the initial risk reduction audit and plan, on air toxics risks posed by a facility, or emission reduction technologies that may be used by a facility that would significantly impact risks to exposed persons, the district may require the plan to be updated and resubmitted to the district.

Comment. Section 45706 continues former Health and Safety Code Section 44391(i) without substantive change.

§ 45707. Prohibited emissions not authorized

45707. Sections 45701 to 45707, inclusive, do not authorize the emission of a toxic air contaminant in violation of an airborne toxic control measure adopted pursuant to Chapter 4 (commencing with Section 31600) of Part 2 or in violation of Section 37600.

Comment. Section 45707 continues former Health and Safety Code Section 44391(j) without substantive change.

§ 45708. Plan equivalence to pollution prevention or source reduction programs

45708. The plan prepared pursuant to Section 45701 shall not be considered to be the equivalent of a pollution prevention program or a source reduction program, except insofar as the audit and plan elements are consistent with source reduction, as defined in Section 25244.14 of the Health and Safety Code, or subsequent statutory definitions of pollution prevention.

Comment. Section 45708 continues former Health and Safety Code Section 44393 without substantive change.

§ 45709. Small businesses

45709. (a) The state board and districts shall provide assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing risk reduction methods, and developing and applying risk reduction techniques.

(b) Risk reduction audits and plans for any industry subject to this chapter which is comprised mainly of small businesses using substantially similar technology may be completed by a self-conducted audit and checklist developed by the state board. The state board, in coordination with the districts, shall provide a copy of the audit and checklist to small businesses within those industries to assist them to meet the requirements of this chapter.

Comment. Section 45709 continues former Health and Safety Code Section 44391(d) without substantive change.

1 **§ 45710. Civil penalties**

2 45710. Any facility operator who does not submit a complete airborne toxic risk
3 reduction audit and plan or fails to implement the measures set forth in the plan as set forth
4 in this chapter is subject to the civil penalty specified in subdivision (a) of Section 45201,
5 and any facility operator who, in connection with the audit or plan, knowingly submits any
6 false statement or representation is subject to the civil penalty specified in subdivision (b) of
7 Section 45201.

8 **Comment.** Section 45710 continues former Health and Safety Code Section 44394 without
9 substantive change.

10 **PART 7. COMMERCIAL SPACE PROGRAMS**

11 **§ 46000. Short title**

12 46000. This part shall be known, and may be cited, as the Commercial Space Program
13 Permit Streamlining Act of 1996.

14 **Comment.** Section 46000 continues the second sentence of former Health and Safety Code
15 Section 44400 without change.

16 **§ 46001. Application of part**

17 46001. (a) This part applies only to Santa Barbara County, Kern County, and San Luis
18 Obispo County.

19 (b) This part applies to regulation of any commercial space program for the purposes of
20 all air pollution regulation under state or local authority.

21 **Comment.** Section 46001(a) continues the first sentence of former Health and Safety Code
22 Section 44400 without substantive change. Section 46001(b) continues former Health and
23 Safety Code Section 44402 without substantive change.

24 **§ 46002. Definitions**

25 46002. As used in this part, the following terms have the following meaning:

26 (a) “Commercial space program” means all nongovernmental activities and equipment at a
27 facility, as defined in subdivision (b), that involve the manufacture or assembly of space
28 vehicles, space launch vehicles, or satellites for purposes of commercial space launch, or
29 that engage in the preparation for launch or the launch of those vehicles or satellites, that
30 have a Standard Industrial Classification code other than national security, and that are the
31 responsibility of, and are controlled by, the owner or operator of the facility.

32 (b) “Facility” means every structure, appurtenance, and improvement that is located on
33 one or more contiguous or adjacent properties under the control of the same person, or
34 under the common control of the same persons.

35 (c) “Space launch” means to place or attempt to place a space vehicle or expendable space
36 launch vehicle and any payload in suborbital trajectory, in Earth orbit in outer space, or
37 otherwise in outer space.

38 (d) “Space vehicle” or “expendable space launch vehicle” means a fabricated part,
39 assembly of parts, or completed unit designed to boost payload spacecraft into the
40 atmosphere and which is consumed or destroyed in the process of boosting the payload
41 from the launchpad.

42 **Comment.** Section 46002 continues former Health and Safety Code Section 44401 without
43 change.

1 ☞ **Staff Note.** The introductory clause of Health and Safety Code Section 44401
2 erroneously refers to “this chapter” rather than “this part.” The error has been corrected.

3 **§ 46003. Air pollution permitting**

4 46003. For purposes of air pollution permitting pursuant to this division, each
5 commercial space program is a separate stationary source if it meets the federal criteria for a
6 stationary source in Section 52.21 of Title 40 of the Code of Federal Regulations and it is
7 consistent with the state implementation plan.

8 **Comment.** Section 46003 continues former Health and Safety Code Section 44403 without
9 change.

10 **§ 46004. Repeal of part**

11 46004. This part shall remain in effect only until January 1, 2007, and as of that date is
12 repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or
13 extends that date.

14 **Comment.** Section 46004 continues former Health and Safety Code Section 44404 without
15 change.

16 PART 8. HALOGENATED REFRIGERANTS AND 17 CHLOROFLUOROCARBONS

18 CHAPTER 1. HALOGENATED REFRIGERANTS

19 **§ 46500. Legislative findings and declarations**

20 46500. (a) The Legislature finds and declares the following:

21 (1) For the first time in human history, the use and disposal of certain manmade products
22 are actively destroying a layer of the earth’s atmosphere without which human life cannot
23 continue to exist.

24 (2) These products, known as chlorofluorocarbons and halons, have already begun to
25 deplete the ozone layer which protects human and other life forms from cancer-causing
26 ultraviolet radiation. Above California, the ozone shield has been depleted about 3 percent
27 over the last 20 years.

28 (3) On January 1, 1989, a 24-nation agreement (the Montreal Protocol) became effective,
29 calling for the reduction in use of most CFCs and halons, and the Environmental Protection
30 Agency has issued regulations designed to freeze production of these products at current
31 levels.

32 (4) The Montreal Protocol was amended in 1990 calling for a reduction of CFC
33 manufacturing to 50 percent of 1986 levels by 1995, further reduction to 15 percent of
34 1986 levels by 1997, and complete elimination by the year 2000. Due to the severity of the
35 ozone depletion problem, however, this phaseout schedule is to be reviewed in 1992 with
36 the objective of accelerating it still further.

37 (5) It is essential to the health and safety of all Californians to take the steps necessary to
38 further decrease and halt the destruction of the ozone layer by CFCs and halons.

39 (b) The Legislature further finds and declares the following:

40 (1) CFCs and halons contribute actively to global warming trends which could
41 dramatically affect the economy and stability of California, including the flooding of coastal
42 lands, loss of crop winters, and destruction of coastal wetlands and forests.

(2) Twenty-five percent of the total amount of CFCs produced every year in the United States are needlessly released into the atmosphere through mobile air-conditioning servicing, maintenance, and leaking.

(3) CFC-12 accounts for 46 percent of California's contribution to ozone depletion from CFCs. Emissions from mobile air-conditioners are estimated to account for 27 percent of all of California's CFC-12 emissions.

(4) Actions required by the federal Clean Air Act amendments of 1990 (Public Law 101-549) will result in programs which require the recycling of CFCs used as refrigerants in existing motor vehicles and stationary systems, beginning in 1992. The severity of the ozone depletion problem, however, compels us to shift to the use of alternative refrigerants as soon as possible.

(5) Most vehicle manufacturers have indicated that they can equip a portion or all of their vehicle fleets with an alternative refrigerant by the mid- to late-1990s, if alternative products successfully complete toxicity testing by the Environmental Protection Agency by 1992.

(c) It is the intent of the Legislature by the enactment of this part to prohibit the use of CFC-based refrigerants in mobile air-conditioning systems by banning the sale of any new automobile, truck, or other motor vehicle in California which utilizes CFC-based refrigerants after January 1, 1995.

Comment. Section 46500 continues former Health and Safety Code Section 44470 without substantive change. Obsolete references to the phase-in of the prohibition of the sale of new vehicles containing CFC-based air-conditioners have not been continued.

☞ **Staff Note.** Health and Safety Code Section 44470(c) declares the Legislature's intent to phase-out the use of CFC-based vehicle air-conditioners by January 1, 1995, with a possible two-year extension. See proposed Section 46505. The time specified for the complete phase out of these air-conditioners, even if extended, has passed. The subdivision has been rewritten to replace obsolete transitional language with prohibitory language. See Staff Notes to proposed Sections 46503 & 46505.

§ 46501. Application of part

46501. This part applies to products containing or manufactured with CFC-11, CFC-12, and HCFC-22 which have an ozone depletion potential (ODP) of greater than .1, and have been identified by the Environmental Protection Agency as substances controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer. Any reference in this part to CFC, or CFCs, means these substances.

Comment. Section 46501 continues former Health and Safety Code Section 44471(a) without substantive change.

§ 46502. "Vehicle air-conditioner"

46502. As used in this part, "vehicle air-conditioner" means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger compartment of any motor vehicle.

Comment. Section 46502 continues former Health and Safety Code Section 44471(b) without substantive change.

§ 46503. Prohibition

46503. On and after January 1, 1995, no person or business shall certify for sale, sell, or offer to sell a new motor vehicle equipped with a vehicle air-conditioner utilizing CFC-based products described in Section 46501.

1 **Comment.** Section 46503 continues former Health and Safety Code Section 44472 without
2 substantive change. Obsolete provisions providing for the gradual phasing in of the
3 prohibition on the sale of new vehicles containing CFC-based air-conditioners have not been
4 continued.

5 ☞ **Staff Note.** Health and Safety Code Section 44472 phases in the prohibition on the sale
6 of vehicles using CFC-based air-conditioners, as follows:

7 (a) On and after January 1, 1993, and prior to January 1, 1994, not more than
8 90 percent of the new 1993 model year or later motor vehicles equipped with
9 vehicle air-conditioners which are certified for sale, sold, or offered for sale in
10 this state shall utilize CFC-based products described in subdivision (a) of
11 Section 44471.

12 (b) On and after January 1, 1994, and prior to January 1, 1995, not more than
13 75 percent of the new 1994 model year or later motor vehicles equipped with
14 vehicle air-conditioners which are certified for sale, sold, or offered for sale in
15 this state shall utilize those CFC-based products.

16 (c) On or after September 1, 1994, not more than 10 percent of all model
17 year 1995 vehicles shall utilize those CFC-based products.

18 (d) On and after January 1, 1995, no person or business shall certify for sale,
19 sell, or offer to sell a new 1995 or later model year motor vehicle equipped
20 with a vehicle air-conditioner utilizing those CFC-based products.

21 Even if the deadlines were extended by two-years pursuant to proposed Section 46505, the
22 phased-in deadlines stated in subdivisions (a)-(c) are still obsolete.

23 **§ 46504. Motor vehicle manufacturer's records and reports**

24 46504. Manufacturers of all motor vehicle models described in Section 46503 shall
25 submit quarterly records and an annual report to the state board detailing the percentage of
26 new models certified for sale, sold, or offered for sale in California with CFC-alternative
27 mobile air-conditioning systems not using the CFC-based products enumerated in Section
28 46501. Compliance with Section 46503 shall be based on the total number of new motor
29 vehicle models with non-CFC-based vehicle air-conditioners certified for sale, sold, or
30 offered for sale versus the total number of new motor vehicle models with vehicle air-
31 conditioners certified for sale, sold, or offered for sale in California each year.

32 **Comment.** Section 46504 continues former Health and Safety Code Section 44473(a)
33 without substantive change.

34 ☞ **Staff Note.** This section requires reporting to demonstrate compliance with the phased-
35 in prohibition on the sale of CFC-based vehicle air conditioners. Because the phased-in
36 implementation is now obsolete, this reporting requirement does not appear to have any
37 continued usefulness. The staff would like to receive input on this point.

38 **§ 46505. Extension of deadlines**

39 46505. Each of the deadlines set forth in Section 46503 may be extended for a period of
40 not more than two years upon a determination by the state board that chemical or
41 technological alternatives to CFC-based products are not yet available and in sufficient
42 supply, or that manufacturers of new motor vehicles require additional time to redesign
43 vehicle air-conditioning systems.

44 **Comment.** Section 46505 continues former Health and Safety Code Section 44473(b)
45 without substantive change.

1 ☞ **Staff Note.** This section provides for a two-year extension to the deadlines stated for the
2 phased-in implementation of the sale prohibition. These deadlines have all passed, even if a
3 two-year extension was applied. The staff would like to receive input on whether this section
4 has any continued usefulness.

5 **§ 46506. Implementing regulations**

6 46506. The state board shall adopt regulations by March 1, 1992, providing for the
7 enforcement of this part.

8 **Comment.** Section 46506 continues former Health and Safety Code Section 44473(c)
9 without substantive change.

10 ☞ **Staff Note.** This section specifies a deadline for the adoption of implementing
11 regulations. This deadline provision may be obsolete. The staff would like to receive input on
12 two questions: (1) Have the regulations been adopted as required? (2) Does the section still
13 serve a useful purpose?

14 **§ 46507. Civil penalty**

15 46507. Any person or business that violates this part is liable for a civil penalty of five
16 hundred dollars (\$500) per incident, not to exceed five thousand dollars (\$5,000) per day.

17 **Comment.** Section 46507 continues former Health and Safety Code Section 44474 without
18 change.

19 CHAPTER 2. CHLOROFLUOROCARBONS

20 **§ 46600. Prohibition on products using saturated chlorofluorocarbon not containing** 21 **hydrogen**

22 46600. (a) No person shall manufacture in this state a saturated chlorofluorocarbon not
23 containing hydrogen for use as an aerosol propellant in a can, canister, or other container.

24 (b) No person shall manufacture in this state any can, canister, or other container that is
25 intended to utilize an aerosol propellant chemically composed, in whole or in part, of a
26 saturated chlorofluorocarbon not containing hydrogen.

27 (c) No person shall sell in this state any can, canister, or other container that utilizes an
28 aerosol propellant chemically composed, in whole or in part, of a saturated
29 chlorofluorocarbon not containing hydrogen.

30 **Comment.** Section 46600 continues former Health and Safety Code Section 119150
31 without substantive change. The references in subdivisions (a)-(c) to the dates on which the
32 prohibitions provided in those subdivisions began (October 15, 1978, December 15, 1978,
33 and April 15, 1979, respectively) are obsolete and have not been continued.

34 **§ 46601. Limitation on prohibitions**

35 46601. Notwithstanding the foregoing provisions of this chapter, nothing in this chapter
36 shall preclude the manufacture or sale of saturated chlorofluorocarbons not containing
37 hydrogen for any of the uses exempted in currently proposed federal regulations, to be
38 modified as the federal regulations are modified.

39 **Comment.** Section 46601 continues former Health and Safety Code Section 119155
40 without change.

1 **§ 46602. Superseding federal laws and regulations**

2 46602. Subdivisions (a) and (b) of Section 46600 shall be superseded by the enactment
3 or adoption of any federal law or regulation prohibiting the manufacture of any aerosol
4 product utilizing saturated chlorofluorocarbons not containing hydrogen and prohibiting the
5 manufacture of saturated chlorofluorocarbons not containing hydrogen for use as an
6 aerosol propellant in a can, canister, or other container.

7 **Comment.** Section 46602 continues former Health and Safety Code Section 119160
8 without substantive change.

9 PART 9. INDOOR AIR QUALITY

10 CHAPTER 1. INDOOR ENVIRONMENTAL QUALITY

11 Article 1. General Provisions

12 **§ 47000. Legislative findings and declarations**

13 47000. The Legislature finds and declares that:

14 (a) The people of the State of California have a primary interest in the quality of the
15 indoor environment in which they live.

16 (b) As people spend greater portions of time each day indoors, the environmental quality
17 of our buildings becomes increasingly important.

18 (c) Changes in building design, materials, construction, and operation have resulted in
19 significant changes in indoor environmental quality.

20 (d) Activities and use of chemical products, appliances, power equipment, wear and tear
21 of structural decorative materials, thermal factors, and mechanical ventilation are degrading
22 the indoor environment, thereby creating mounting dangers to the public health, safety, and
23 welfare.

24 **Comment.** Section 47000 continues former Health and Safety Code Section 105400
25 without change.

26 **§ 47001. Public interest**

27 47001. The Legislature, in view of the findings and declarations specified in Section
28 47000, declares that the public interest shall be safeguarded by a coordinated, coherent state
29 effort to protect and enhance the indoor environmental quality in residences, public
30 buildings, and offices in the state.

31 **Comment.** Section 47001 continues former Health and Safety Code Section 105410
32 without change.

33 **§ 47002. “Indoor environmental quality”**

34 47002. For the purpose of this chapter, “indoor environmental quality” means the
35 environment inside a residential dwelling, including a house or apartment, or inside a
36 school, office, public building, or other facility to which the general public has access. The
37 term “indoor environmental quality” shall not include industrial working environments.

38 **Comment.** Section 47002 continues former Health and Safety Code Section 105415
39 without change.

1 **§ 47003. Coordination of efforts**

2 47003. The department shall coordinate efforts to assess, protect, and enhance indoor
3 environmental quality.

4 **Comment.** Section 47003 continues former Health and Safety Code Section 105420
5 without change.

6 **§ 47004. Research and studies**

7 47004. The department shall conduct and promote the coordination of research,
8 investigations, experiments, demonstrations, surveys, and studies relating to the causes,
9 effects, extent, prevention, and control of indoor pollution.

10 **Comment.** Section 47004 continues former Health and Safety Code Section 105425
11 without change.

12 Article 2. Volatile Organic Compounds and Radon in New Buildings

13 **§ 47050. Volatile organic compounds**

14 47050. (a) The department through its Indoor Air Quality Program shall develop
15 nonbinding guidelines for the reduction of exposure to volatile organic compounds (VOC)
16 from construction materials in newly constructed or remodeled office buildings. At a
17 minimum, the department shall consider all of the following:

- 18 (1) The type of building to which the guidelines shall apply.
19 (2) The methodology for identifying indoor sources of VOC.
20 (3) The bake-out procedures prior to occupancy for newly constructed buildings.
21 (4) The procedures for VOC reduction during and after major remodeling of occupied
22 buildings.

23 (5) The need to establish mandatory regulations rather than nonbinding guidelines for the
24 procedures to reduce VOC exposure in newly constructed buildings and during the
25 remodeling of buildings and, in addition, the need for regulation regarding the occupancy
26 of a newly constructed building or a building undergoing remodeling where VOC reduction
27 is to be a consideration.

28 (6) The need to establish an ad hoc group of building construction material
29 manufacturers, builders, building owners and managers, organized labor, sheetmetal
30 contractors, plumbing contractors, mechanical engineers, architects, and building
31 inspectors to advise the department on procedures and costs related to implementing the
32 proposed guidelines.

33 (b) The department shall develop and submit the nonbinding guidelines to the
34 Legislature, and file copies with the Department of General Services and the State Building
35 Standards Commission, by January 1, 1992.

36 (c) The guidelines developed by the department pursuant to this section shall be
37 nonbinding and voluntary, and shall therefore, be exempt from the procedures for adoption
38 of regulations, including the review and approval by the Office of Administrative Law,
39 pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the
40 Government Code.

41 **Comment.** Section 47050 continues former Health and Safety Code Section 105405
42 without change.

43 ☞ **Staff Note.** Subdivision (b) specifies a deadline for satisfying the requirements of that
44 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?

§ 47051. Radon assessment and mitigation

47051. (a) If model construction standards and techniques for controlling radon levels within new buildings are developed by the United States Environmental Protection Agency, the State Department of Health Services may adopt the standards and incorporate them into any radon assessment and mitigation plan which may be completed by the department and which becomes operative after January 1, 1990, unless the Department of Housing and Community Development adopts radon mitigation building standards, in which case the State Department of Health Services shall adopt no standards other than the standards adopted by the Department of Housing and Community Development.

(b) Any radon assessment and mitigation plan shall include appropriate measures designed to detect, avoid, or dissipate dangerous levels of radon gas at potential building sites or during construction of new residential buildings in areas affected by radon. Any of those measures shall be appropriately delineated so as to apply only to certain at-risk buildings and geographic areas, and the plan shall specify construction projects, building characteristics, and geographical areas to which the measures apply, to assure ease of compliance and consistency with the findings and assessment of the United States Environmental Protection Agency regarding radon risks. The plan may include reasonable provisions for testing and detection of radon at potential building sites as well as measures to provide for the appropriate radon-dissipating ventilation and insulation of new residential construction consistent with prevailing techniques.

(c) If regulations are adopted by the department to implement any radon assessment and mitigation plan completed by the department after January 1, 1990, no city, county, or other governmental agency may issue a permit to construct any building subject to state department regulation to any applicant who does not first comply with testing or building standards which may be implemented pursuant to this section.

(d) Any building standards which may be adopted pursuant to this section shall become effective as provided by Section 17958 of the Health and Safety Code.

(e) In developing regulations pursuant to this section, the state department shall consider the methods and techniques which can provide an adequate level of safety at the lowest cost in order to reduce the impact on housing prices.

(f) Subdivisions (a) to (e), inclusive, shall only become operative if federal funds are available to the department for the purposes specified in this section, as determined by the department.

Comment. Section 47051 continues former Health and Safety Code Section 105430 without substantive change. The subdivisions have been redesignated.

CHAPTER 2. CERTIFICATION OF RADON SPECIALISTS AND LABORATORIES

Article 1. General Provisions

§ 47100. Establishment of certification requirements

47100. This chapter establishes requirements for the certification of radon measurement laboratories, radon testing and consulting specialists, and radon mitigation contractors.

Comment. Section 47100 continues former Health and Safety Code Section 106750 without substantive change.

1 **§ 47101. Certification required**

2 47101. Except as provided in Section 47255, no person may test for, analyze, or mitigate
3 against, the presence of radon in any building or on any building lot, design a radon
4 mitigation system, purvey radon testing equipment or radon mitigation equipment to the
5 general public, or represent or advertise that he or she may so test, mitigate, or purvey,
6 unless that person has first applied for and obtained certification for the activity from the
7 department pursuant to this chapter, that certification has not expired or been revoked or
8 suspended.

9 **Comment.** Section 47101 continues former Health and Safety Code Section 106775
10 without substantive change.

11 **§ 47102. Application of article**

12 47102. This chapter does not apply to a person in any of the following circumstances:

13 (a) The person is testing for, or mitigating radon in a building that the person owns or
14 occupies.

15 (b) The person is designing or constructing mitigation measures to prevent against radon
16 infiltration or accumulation in new construction.

17 (c) The person is performing scientific research regarding testing or mitigation of radon,
18 but only if the person informs the owner and the occupant of the building of all of the
19 following:

20 (1) That the person is not certified by the department to test for, or to mitigate against,
21 radon.

22 (2) Any test results are neither certified or valid for legal purposes.

23 (3) Any mitigation methods suggested or used are experimental.

24 (d) The person or entity is purveying radon equipment that is approved by the department
25 for sale to the general public that is manufactured or designed by a person or entity that is
26 certified under this chapter, or the person or entity is purveying radon equipment to a
27 person or entity that is certified under this chapter.

28 **Comment.** Section 47102 continues former Health and Safety Code Section 106845
29 without substantive change.

30 **§ 47103. Publication of list of certified persons**

31 47103. The department shall publish quarterly, and work with associations representing
32 certified radon testers and mitigators to widely disseminate, a list of persons and entities
33 certified under this chapter, and, to the extent the information is available, the list of
34 persons and entities of reciprocal states that are known to operate in this state.

35 **Comment.** Section 47103 continues former Health and Safety Code Section 106840
36 without substantive change. The reference to the date on which the quarterly publication
37 requirement began (March 1, 1992) is obsolete and has not been continued.

38 **§ 47104. Reciprocal agreements with other states**

39 47104. The state may enter into a reciprocal agreement with any other state under which
40 each state recognizes the other's radon certification program, if that other reciprocal state's
41 program meets this state's basic requirements. Each reciprocal agreement shall be published
42 in the quarterly bulletin published pursuant to Section 47103.


43 **Comment.** Section 47104 continues former Health and Safety Code Section 106810
44 without change.

Article 2. Definitions

§ 47150. Application of definitions.

47150. Unless the provision or context requires otherwise, the definitions in this article govern the construction of this chapter.

Comment. Section 47150 is new.

 **Staff Note.** This chapter provides definitions but does not state their application. The context implies that the definitions are intended to apply to the chapter. Section 47150 codifies this implication.

§ 47155. “Department”

47155. “Department” means the State Department of Health Services.

Comment. Section 47155 continues former Health and Safety Code Section 106770 without change.

§ 47160. “Radon measurement laboratory”

47160. “Radon measurement laboratory” means a commercial laboratory that analyzes radon detectors or tests for radon or radon decay products. A radon measurement laboratory shall meet the provisions for certification of this chapter.

Comment. Section 47160 continues former Health and Safety Code Section 106755 without substantive change.

§ 47165. “Radon testing and consulting specialist”

47165. “Radon testing and consulting specialist” means an individual person who performs radon or radon progeny measurements in buildings; who provides professional or expert advice on radon and radon progeny measurements, radon entry routes, and other radon related activities; and who is knowledgeable in the health risk associated from exposure to radon. A radon testing and consulting specialist shall meet the provisions for certification of this chapter.

Comment. Section 47165 continues former Health and Safety Code Section 106760 without change.

§ 47170. “Radon mitigation contractor”

47170. “Radon mitigation contractor” means an individual person, corporation, company, or other association that repairs or alters a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere. A radon mitigation contractor or the operating supervisor of the radon mitigation contractor shall meet the provisions for certification of this chapter.

Comment. Section 47170 continues former Health and Safety Code Section 106765 without substantive change.

Article 3. Certification Procedure

§ 47200. Application forms

47200. The application for certification, or renewal of certification, shall be submitted in writing on forms provided by the department.

Comment. Section 47200 continues former Health and Safety Code Section 106790 without change.

§ 47201. Application fee and evidence of minimum qualifications

47201. The application shall be accompanied with the following:

(a) A nonrefundable application fee in the amount provided in Section 47205.

(b) Written evidence that the applicant has the minimum qualifications as required by Sections 47102, 47103, and 47250 to 47256, inclusive, to perform the activity for which certification is sought.

Comment. Section 47201 continues former Health and Safety Code Section 106795 without substantive change.

§ 47202. Combined applications

47202. Applications for more than one type of certification may be combined and submitted as one application, if all of the requirements for each type of certification provided in this chapter are met.

Comment. Section 47202 continues former Health and Safety Code Section 106800 without substantive change.

§ 47203. Validity and expiration of certification

47203. A certification issued under this chapter is valid for not more than two years and shall expire on December 31 of the second calendar year after it is issued. The certification shall be issued in the form and manner determined by the department.

Comment. Section 47203 continues former Health and Safety Code Section 106780 without substantive change.

§ 47204. Renewal

47204. An application for renewal of a radon certificate shall be filed not later than 90 days before the expiration of an existing certification.

Comment. Section 47204 continues former Health and Safety Code Section 106785 without change.

§ 47205. Deposit and use of funds

47205. (a) The application fees as specified in Section 47201 shall be deposited into the General Fund. The moneys in this fund are available, upon appropriation by the Legislature, to the department for the purposes of this chapter.

(b) The application fees for certification are nonrefundable and shall be in the following amounts:

(1) Radon Measurement Laboratory \$300

(2) Radon Testing and Consulting Specialist \$100

(3) Radon Mitigation Contractor \$200

Comment. Section 47205 continues former Health and Safety Code Section 106805 without substantive change.


☞ **Staff Note.** Subdivision (a) refers to “application fees as specified in § 105805.” It isn’t clear what this means. There is no Health and Safety Code Section 105805. The probable intention was to refer to Health and Safety Code Section 106795, which establishes the fee requirement. This error has been corrected.

Article 4. Qualifications

§ 47250. Minimum qualifications of applicant

47250. An applicant for certification under this chapter shall meet the minimum qualifications in Sections 47250 to 47256, inclusive.

Comment. Section 47250 continues former Health and Safety Code Section 106815 without substantive change.

 **Staff Note.** The reference in Health and Safety Code Section 106815 to the “minimum qualifications in Sections 106815 to 106855” is overbroad. Sections 106840 (publication of list of certified persons) and 106845 (application of article) do not relate to certification qualifications. These sections have been moved and are no longer part of the range of sections referred to in proposed Section 47250. The staff believes that this continues existing law without substantive change.

In fact, Health and Safety Code Section 106815 may be superfluous. All of the qualification provisions in the cited range of sections operate by their own terms. It isn’t clear that this section adds anything by reiterating their requirements in general terms. The staff would like to receive input on whether the approach taken in proposed Section 47250 is appropriate and would also be interested in hearing whether the section could be dispensed with entirely.

§ 47251. Radon testing and consulting specialist qualifications

47251. A person shall not be certified or recertified as a radon testing and consulting specialist unless the applicant meets all of the following qualifications:

(a) The applicant submits written evidence of successful completion of a minimum of 16 hours of a classroom course of study in radon measurement meeting the standards adopted by the department. The department shall adopt the guidelines for the classroom training course of the National Radon Measurement Proficiency Program of the federal Environmental Protection Agency as the standards for the classroom course of study pursuant to Section 47256.

(b) The applicant provides a quality assurance and quality control program meeting the standards adopted by the department. The department shall adopt the guidelines for the quality assurance and quality control program provided in the National Radon Measurement Proficiency Program of the federal Environmental Protection Agency as the standards for the quality assurance and quality control program pursuant to Section 47256.

(c) For renewal of certification, the applicant submits written evidence of successful participation in each radon proficiency program applicable to radon testing and consulting specialists offered by the federal Environmental Protection Agency since the date of the prior application for certification, or shows good cause for not participating in each of those programs in which the applicant did not participate.

Comment. Section 47251 continues former Health and Safety Code Section 106820 without substantive change.

§ 47252. Laboratory qualifications

47252. (a) A laboratory shall not be certified or recertified as a radon measurement laboratory unless the laboratory complies with the applicable requirements in Sections 47200 to 47204, inclusive.

(b) A radon measurement laboratory certification authorizes the laboratory to perform radon analysis utilizing only those types of devices for which it is certified.


1 (c) A laboratory shall not be certified or recertified as a radon measurement laboratory
2 unless the applicant meets all of the following qualifications:

3 (1) The applicant submits written evidence of successful completion by an operating
4 supervisor of the laboratory of a classroom course of study in radon measurement meeting
5 the standards adopted by the department. The department shall adopt the guidelines for the
6 classroom training course of the National Radon Measurement Proficiency Program of the
7 federal Environmental Protection Agency as the standards for the classroom course of
8 study pursuant to Section 47256.

9 (2) The laboratory provides (a) quality assurance and quality control program meeting the
10 standards adopted by the department. The department shall adopt the guidelines for the
11 quality assurance and quality control program provided in the National Radon Measurement
12 Proficiency Program of the federal Environmental Protection Agency as the standards for
13 the quality assurance and quality control program pursuant to Section 47256.

14 (3) For renewal of certification, the applicant submits written evidence of successful
15 participation by the operating supervisor of the laboratory in each radon proficiency
16 program applicable to radiation measurement laboratories offered by the federal
17 Environmental Protection Agency since the date of the prior application for certification, or
18 shows good cause for not participating in each of those programs in which the applicant's
19 operating supervisor did not participate.

20 **Comment.** Section 47252 continues former Health and Safety Code Section 106825
21 without substantive change.

22  **Staff Note.** Subdivision (a) conditions certification of a radon measurement laboratory
23 on compliance with “applicable requirements in Sections 106775 to 106805.” It isn’t clear
24 what this actually requires.

25 The reference is probably intended to incorporate the requirements of Sections 106785 to
26 10795, as these sections establish certification application and renewal procedures. However,
27 express incorporation of these requirements into this section could raise a problematic
28 implication — that these procedures do not apply to certification of radon testing and
29 consulting specialists, since Health and Safety Code Section 106820 does not expressly
30 incorporate the requirements.

31 The reference in subdivision (a) is probably not intended to include Sections 106775,
32 106780, and 106805. These sections do not express requirements that would apply to
33 certification applicants. Section 106775 establishes the general certification requirement.
34 Section 106780 governs the effective period of certification. Section 106805 governs the
35 disposition of fee revenue generated by the certification process.

36 In proposed Sections 47252 and 47253, the staff has limited the cited range of statutes to
37 those sections governing the application and renewal process (proposed Sections 47200 to
38 47204). The staff would like to receive input on two questions: (1) Does this change preserve
39 the substance of existing law? (2) Would it be beneficial to add an equivalent provision to
40 proposed Section 47251?

41 § 47253. Contractor qualifications

42 47253. (a) A contractor shall not be certified as a radon mitigation contractor unless the
43 applicant complies with the applicable requirements in Sections 47200 to 47204, inclusive.


44 (b) A contractor shall not be certified or recertified as a radon mitigation contractor unless
45 the applicant meets all of the following qualifications:

46 (1) The applicant submits written evidence of successful completion of a radon
47 contractors proficiency program meeting the standards adopted by the department. The
48 department shall adopt the guidelines for the National Radon Contractors Proficiency

1 Program of the federal Environmental Protection Agency as the standards for the radon
2 contractors proficiency program pursuant to Section 47256.

3 (2) For renewal of certification, the applicant submits written evidence of successful
4 participation in each radon proficiency program applicable to radon contractors offered by
5 the federal Environmental Protection Agency offered since the date of prior application, or
6 shows good cause for not participating in each of those programs in which the applicant's
7 operating supervisor did not participate.

8 **Comment.** Section 47253 continues former Health and Safety Code Section 106830
9 without substantive change.

10  **Staff Note.** Subdivision (a) raises the same issue discussed in the Staff Note to proposed
11 Section 47252.

12 **§ 47254. State and federal radon workers**

13 47254. An employee of the State of California or any employee of an agency of the
14 United States working in the radon program, and who meets the experience and educational
15 requirement for certification in any of the categories set forth in this chapter, shall be
16 certified in that category. A certification under this section is valid only for purposes of that
17 person's employment and shall not authorize the employee to perform any private
18 consulting within the State of California.

19 **Comment.** Section 47254 continues former Health and Safety Code Section 106835
20 without substantive change.

21 **§ 47255. Persons or entities from states with reciprocal agreements**

22 47255. A person or entity that is certified in another state, that has a reciprocal agreement
23 with this state pursuant to Section 47104, may conduct those activities in this state for
24 which the person or entity is certified in that other state.

25 **Comment.** Section 47255 continues former Health and Safety Code Section 106850
26 without substantive change.

27 **§ 47256. Federal guidelines adopted as state standards**

28 47256. (a) The federal guidelines prescribed in this chapter shall become state standards
29 unless the department finds the federal guidelines do not promote the intent and purposes of
30 this chapter. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
31 Division 3 of Title 2 of the Government Code, and except as provided in subdivision (b), a
32 federal guideline that becomes a state standard pursuant to this chapter shall take effect in
33 this state 30 days after it becomes effective as a federal guideline.

34 (b) Any person who will be adversely affected by adoption of the federal guideline in this
35 state may, within the 30 days prior to its becoming effective as a standard in this state, file
36 with the department, in writing, objections and a request for a hearing. The timely filing of
37 substantial objections to the adoption of a federal guideline that has become effective as a
38 state standard, stays the adoption of the federal guideline as a state standard in this state
39 until the department conducts a hearing and decides the issue.

40 **Comment.** Section 47256 continues former Health and Safety Code Section 106855
41 without substantive change.

Article 5. Violations and Penalties

§ 47300. Revocation or suspension of certificates

47300. The department may revoke or suspend a certification for any of the following reasons:

(a) Any misstatement in the application or in any supplementary statement.

(b) Any condition revealed by the application, supplementary statement, report, record, or other evidence, that would warrant the department's refusal to grant a registration on an original application.

(c) A violation of any law relating to, or failure to observe any of the applicable terms or provisions of, registration, or any other applicable rule, regulation, code, or order adopted pursuant to this section.

(d) Being discontinued or removed, or having the operating supervisor discontinued or removed, from the federal Environmental Protection Agency's Radon and Radon Progeny Measurement Proficiency Program or its Radon Contractors Program during the term of the certification.

Comment. Section 47300 continues former Health and Safety Code Section 106860 without change.

§ 47301. Misdemeanor violations

47301. It is unlawful for an individual to function as a radon measurement laboratory, radon testing and consulting specialist, or a radon mitigation contractor in violation of this chapter. A violation of this chapter is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000).

Comment. Section 47301 continues former Health and Safety Code Section 106865 without substantive change.

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Bus. & Prof. Code § 9884.6 (amended). Registration of automotive repair dealers

SEC. _____. Section 9884.6 of the Business and Professions Code is amended to read:

9884.6. (a) It is unlawful for any person to be an automotive repair dealer unless that person has registered in accordance with this chapter and unless that registration is currently valid.

(b) A person who, for compensation, adjusts, installs, or tests retrofit systems for purposes of ~~Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of the Health and Safety Code~~ Chapter 5 (commencing with Section 42000) of Title 4 of Part 5 of Division 4 of the Environment Code is an automotive repair dealer for purposes of this chapter.

Comment. Section 9884.6 is amended to substitute a reference to the Environment Code provisions that continue former Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of the Health and Safety Code.

Bus. & Prof. Code § 9886 (amended). Vehicle inspection and repair fund

SEC. _____. Section 9886 of the Business and Professions Code is amended to read:

9886 All fees and revenues collected pursuant to this chapter and ~~Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code~~ Title 5 (commencing with Section 42300) of Part 5 of Division 4 of the Environment Code shall be paid into the State Treasury to the credit of the Vehicle Inspection and Repair Fund, which is hereby created.

Comment. Section 9886 is amended to substitute a reference to the Environment Code provisions that continue former Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

Bus. & Prof. Code § 9886.1 (amended). Director's monthly report to controller

SEC. _____. Section 9886.1 of the Business and Professions Code is amended to read:

9886.1. The director shall report to the Controller at the beginning of each month, for the month preceding, the amount and source of all fees and revenues received by the department pursuant to this chapter and ~~Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code~~ Title 5 (commencing with Section 42300) of Part 5 of Division 4 of the Environment Code, and at that time shall pay the entire amount of those fees and revenues into the State Treasury for credit to the Vehicle Inspection and Repair Fund.

Comment. Section 9886.1 is amended to substitute a reference to the Environment Code provisions that continue former Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

Bus. & Prof. Code § 9886.2 (amended). Appropriation

SEC. _____. Section 9886.2 of the Business and Professions Code is amended to read:

9886.2. The money in the Vehicle Inspection and Repair Fund necessary for the administration of this chapter and ~~Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code~~ Title 5 (commencing with Section 42300) of Part 5 of Division 4 of the Environment Code is available to the department, when appropriated for those purposes. The money in the Certification Account, which is hereby created in the Vehicle Inspection and Repair Fund, shall be available pursuant to Chapter 20.5 (commencing with Section 9889.70).

Comment. Section 9886.2 is amended to substitute a reference to the Environment Code provisions that continue former Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

Bus. & Prof. Code § 9886.4 (amended). Payment of salaries, expenses and costs

SEC. _____. Section 9886.4 of the Business and Professions Code is amended to read:
9886.4. All salaries, expenses, or costs incurred or sustained pursuant to this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code Title 5 (commencing with Section 42300) of Part 5 of Division 4 of the Environment Code shall be payable only out of the Vehicle Inspection and Repair Fund.


Comment. Section 9886.4 is amended to substitute a reference to the Environment Code provisions that continue former Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

Bus. & Prof. Code § 9889.22 (amended). False statements or entries

SEC. _____. Section 9889.22 of the Business and Professions Code is amended to read:
9889.22. The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code Title 5 (commencing with Section 42300) of Part 5 of Division 4 of the Environment Code constitutes perjury and is punishable as provided in the Penal Code.

Comment. Section 9889.22 is amended to substitute a reference to the Environment Code provisions that continue former Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

Educ. Code § 17213. Requirements for approval of project

 **Staff Note.** Education Code Section 17213 contains a reference to Section 44321 of the Health and Safety Code. The reference must be replaced with a reference to Section 45101 of the Environment Code.

Conforming revisions to Section 17213 were set out in the staff draft of Division 3 of the Environment Code. See Memorandum 98-21. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Educ. Code § 17921 (amended). Revenue sources

SEC. _____. Section 17921 of the Education Code is amended to read:
17921. A school district or county office of education that establishes a schoolbus emissions reduction fund may receive revenues from air pollution control district and air quality management district grants, revenues from a city that are granted pursuant to paragraph (1) of subdivision (b) of Section 44243 of the Health and Safety Code subdivision (a) of Section 40752 of the Environment Code, or from any other source. The school district or county office of education shall contribute a majority of the money deposited in its schoolbus emissions reduction fund.

Comment. Section 17921 is amended to substitute a reference to the Environment Code provision that continues former Health and Safety Code Section 44243(b)(1).

Educ. Code § 17924 (amended). State guidelines for emission reduction credits

SEC. _____. Section 17924 of the Education Code is amended to read:

17924. The Chairperson of the State Air Resources Board and the Superintendent of Public Instruction shall jointly develop guidelines for school district or county office of education use that describe all of the following:

(a) The manner in which school districts or county offices of education may obtain funding from private and public entities for deposit into a school district or county office of education schoolbus emissions reduction fund.

(b) The methods for determining the quantity and allocation of emission reduction credits generated from a new bus that replaces an existing bus or from a new or retrofitted bus that represents an expansion of fleet capacity.

(c) The methods by which school districts or county offices of education located in the South Coast Air Quality Management District may obtain funds from cities pursuant to ~~paragraph (1) of subdivision (b) of Section 44243 of the Health and Safety Code~~ subdivision (a) of Section 40752 of the Environment Code.

Comment. Section 17924 is amended to substitute a reference to the Environment Code provision that continues former Health and Safety Code Section 44243(b)(1).

Educ. Code § 39003. Requirements for approval of project

☞ **Staff Note.** Education Code 39003 contains a reference to Section 44321 of the Health and Safety Code. The reference must be replaced with a reference to Section 45101 of the Environment Code.

Conforming revisions to Section 39003 were set out in the staff draft of Division 3 of the Environment Code. See Memorandum 98-21. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Fin. Code § 18218 (amended). Collection costs

SEC. _____. Section 18218 of the Financial Code is amended to read:

18218. Notwithstanding any other provision of this division, an industrial loan company, in the collection of a delinquent loan of an unpaid principal balance, may do any of the following:


(a) Collect and receive the court costs and reasonable attorney's fees allowed by a court in a judgment against a defaulting debtor.

(b) Contract for, collect, and receive the bona fide expenses actually incurred and paid by the industrial loan company, not exceeding 10 percent of the unpaid principal balance of the loan where no judgment at law is sought.

(c) Contract for, collect, and receive the bona fide expenses actually incurred and paid by the industrial loan company in obtaining a certificate of compliance or certificate of noncompliance issued for a motor vehicle pursuant to ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environmental Code and the rules and regulations of the State Air Resources Board prior to the consignment of the vehicle for sale at public auction, pursuant to Sections 24007 and 24007.5 of the Vehicle Code.

Comment. Section 18218 is amended to substitute a reference to the Environment Code provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Gov't. Code § 7550.5. Reports to Legislature or Governor

 **Staff Note.** Government Code Section 7550.5 contains references to Sections 43101, 43101.5, 43206, 43701, 44011.6, 44021 and 44361 of the Health and Safety Code. These references must be replaced with references to appropriate sections of the Environment Code.

Conforming revisions to Section 7550.5 were set out in the staff draft of Division 2 of the Environment Code. See Memorandum 98-20. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Gov't. Code § 65089.10 (amended). Expenditures by congestion management agency

SEC. _____. Section 65089.10 of the Government Code is amended to read:
65089.10. Any congestion management agency that is located in the Bay Area Air Quality Management District and receives funds pursuant to ~~Section 44241 of the Health and Safety Code~~ Sections 40700 to 40703, inclusive, of the Environment Code for the purpose of implementing paragraph (3) of subdivision (b) of Section 65089 shall ensure that those funds are expended as part of an overall program for improving air quality and for the purposes of this chapter.

Comment. Section 65089.10 is amended to substitute a reference to the Environment Code provisions that continue former Health and Safety Code Section 44241.

Gov't. Code § 65850.2 (amended). Requirements for applications

SEC. _____. Section 65850.2 of the Government Code is amended to read:
65850.2. (a) Each city and each county shall include, in its information list compiled pursuant to Section 65940 for development projects, or application form for projects that do not require a development permit other than a building permit, both of the following:

(1) The requirement that the owner or authorized agent shall indicate whether the owner or authorized agent will need to comply with the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code or the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county.

(2) The requirement that the owner or authorized agent certify whether or not the proposed project will have more than a threshold quantity of a regulated substance in a process or will contain a source or modified source of hazardous air emissions.

(b) A city or county shall not find the application complete pursuant to Section 65943 or approve a development project or a building permit for a project that does not require a development permit other than a building permit, in which a regulated substance will be present in a process in quantities greater than the applicable threshold quantity, unless the owner or authorized agent for the project first obtains, from the administering agency with jurisdiction over the facility, a notice of requirement to comply with, or determination of exemption from, the requirement to prepare and submit an RMP. Within five days of submitting the project application to the city or county, the applicant shall submit the information required pursuant to paragraph (2) of subdivision (a) to the administering agency. This notice of requirement to comply with, or determination of exemption from, the requirement for an RMP shall be provided by the administering agency to the applicant, and the applicant shall provide the notice to the city or county within 25 days of the administering agency receiving adequate information from the applicant to make a determination as to the requirement for an RMP. The requirement to submit an RMP to the administering agency shall be met prior to the issuance of a certificate of occupancy or its

substantial equivalent. The owner or authorized agent shall submit, to the city or county, certification from the air pollution control officer that the owner or authorized agent has provided the disclosures required pursuant to Section 42303 of the Health and Safety Code 38802 of the Environment Code.

(c) A city or county shall not issue a final certificate of occupancy or its substantial equivalent unless there is verification from the administering agency, if required by law, that the owner or authorized agent has met, or is meeting, the applicable requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code, and the requirements for a permit, if required by law, from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the owner or authorized agent.

(d) The city or county, after considering the recommendations of the administering agency or air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction of the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for applications for compliance with this section sufficient to recover their reasonable costs of carrying out this section. Those fees shall be used only for the implementation of this section.

(g) As used in this section, the following terms have the following meaning:

(1) "Administering agency," "process," "regulated substance," "RMP," and "threshold quantity" have the same meaning as set forth for those terms in Section 25532 of the Health and Safety Code.


(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, "hazardous air emissions" also means emissions into the ambient air of any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code 45101 of the Environment Code.

(h) Any misrepresentation of information required by this section shall be grounds for denial, suspension, or revocation of project approval or permit issuance. The owner or authorized agent required to comply with this section shall notify all future occupants of their potential duty to comply with the requirements of Section 25505 and Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(i) This section does not apply to applications solely for residential construction.

Comment. Section 65850.2 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 42303 and 44321.

Health & Safety Code § 25198.3. Cooperative agreements

 **Staff Note.** Health and Safety Code Section 25198.3 contains references to Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, and Part 6 (commencing with Section 44300) of, Division 26 of the Health and Safety Code. These references must be replaced with references to appropriate sections of the Environment Code.

Conforming revisions to Section 25198.3 were set out in the staff draft of Division 3 of the Environment Code. See Memorandum 98-21. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Other provisions of the Environment Code

Staff Note. (1) There are several sections of earlier parts of Division 4 of the proposed Environment Code that refer to sections that have been included in Parts 5-9. See proposed Environment Code §§ 30205, 30245, 30430, 31750, 31751, 31752, 31753, 31754, 32006, 32051, 35250, 36410, 37852, 37853, 39001, 39002, 39003, 39004, 39005, 39006, 39007, and 39505. Conforming changes to these sections will be made in the revised draft of this division.

(2) There are also sections of earlier divisions of the proposed Environment Code that refer to sections that have been included in Parts 5-9 of this division. See proposed Environment Code §§ 1401-1403, 4200, and 21151.8. Conforming changes to these sections will be made in the revised draft of this division.

Pub. Cont. Code § 10327 (amended). Purchases of motor vehicles

SEC. _____. Section 10327 of the Public Contract Code is amended to read:
10327. Except for motor vehicles described in Section 43805 of the Health and Safety Code 42105 of the Environment Code, the provisions of Article 1 (commencing with Section 43800), Chapter 4, Part 5, Division 26 of the Health and Safety Code Section 42201 of, and Chapter 6 (commencing with Section 42101) of Title 4 of Part 5 of Division 4 of, the Environment Code shall govern the purchase of all motor vehicles by the state to the extent that the Department of General Services determines that these low-emission vehicles are reasonable to meet state needs pursuant to Section 43804 of the Health and Safety Code 42104 of the Environment Code.

Comment. Section 10327 is amended to substitute references to the Environment Code provisions that continue former provisions of Article 1 (commencing with Section 43800) of Chapter 4 of Part 5 of Division 26 of the Health and Safety Code.

Pub. Res. Code § 41783 (amended). Source reduction and recycling

SEC. _____. Section 41783 of the Public Resources Code is amended to read:
41783. For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(a) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code Sections 39100 to 39104, inclusive, of the Environment Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and safety or the environment.

(e) The transformation facility is permitted and operational on or before January 1, 1995.

(f) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

Comment. Section 41783 is amended to substitute a reference to the Environment Code provisions that continue former Health and Safety Code Section 42315.

Pub. Res. Code § 44203 (amended). Cooperative agreements

SEC. _____. Section 44203 of the Public Resources Code is amended to read:

44203. (a) The secretary may enter into any cooperative agreement which meets the requirements of this article.

(b) Each cooperative agreement shall include, but shall not be limited to, all requirements determined to be necessary to meet the requirements of subdivision (e) to do all of the following:

(1) Protect water quality, as determined by the State Water Resources Control Board or the appropriate California regional water quality control board.

(2) Protect air quality, as determined by the State Air Resources Board or the appropriate air pollution control officer.

(3) Provide for proper management of solid wastes, as determined necessary by the California Integrated Waste Management Board.

(4) In making these determinations, the state agencies shall consider any applicable federal environmental and public health and safety laws.

(c) A decision by the secretary whether to enter into a cooperative agreement shall be based on a good faith determination concerning whether a proposed cooperative agreement meets the requirements of this article. The secretary shall take this action within 130 days of a written request by the tribe that the secretary approve a draft cooperative agreement. At least 60 days prior to determining whether to enter into a cooperative agreement, the secretary shall provide notice, and make available for public review and comment, drafts of his or her proposed action and drafts of the findings and determinations that are required by this section. The secretary shall hold a public hearing in the affected area on the proposed action within the time period for taking that action, as specified in this section. Within 10 days after the close of the public review and comment period, the agencies shall complete the determinations required by this section and the secretary shall issue a final decision.

(d) The findings and determinations of the secretary and relevant agencies made pursuant to this section shall explain material differences between state laws and regulations and the proposed tribal or federal functionally equivalent provisions. The findings and determinations do not need to explain each difference between the state and tribal or federal requirements as long as they identify and evaluate whether the material differences meet the requirements of this article, including, but not limited to, providing at least as much protection for public health and safety and the environment as would the state requirements.

(e) Any cooperative agreement executed pursuant to this article shall provide for regulation of the solid waste facility through inclusion in the agreement of design, permitting, construction, siting, operation, monitoring, inspection, closure, postclosure,

liability, enforcement, and other regulatory provisions applicable to a solid waste facility, or which relate to any environmental consequences that may be caused by facility construction or operation, that are functionally equivalent to all of the following:

(1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section 13370) of, Division 7 of the Water Code.

(2) ~~Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, and Part 6 (commencing with Section 44300) of, Division 26 of the Health and Safety Code~~ Title 6 (commencing with Section 37600) of, Title 7 (commencing with Section 38700) of, and Title 8 (commencing with Section 39800) of Part 4 of, and Part 6 (commencing with Section 45000) of, Division 4 of the Environment Code.

(3) This division.

(4) All regulations adopted pursuant to the statutes specified in this section.

(5) Any other provision of state environmental, public health, and safety laws and regulations germane to the solid waste facility proposed by the tribe.

(f) The tribal organizational structures or other means of implementing the requirements specified in subdivision (e) are not required to be the same as the state organizational structures or means of implementing its system of regulation.

(g) Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 44205, shall constitute a "project" as defined in Section 21065 and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(h) Each cooperative agreement shall provide for the incorporation of the standards and requirements germane to the protection of the environment, public health, and safety listed in subdivision (e), as enacted, or as those provisions may be amended after January 1, 1992, or after the effective date of any cooperative agreement, if those standards and requirements meet both of the following requirements:

(1) The standards and requirements do not discriminate against a tribe which has executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or not more stringent than, other rules applicable to other similar or analogous facilities or operations outside Indian country.

(2) Adequate notice and opportunity for comment on the incorporation of new and amended standards or requirements are provided to the tribe, facility owner, and operator to facilitate any physical or operational changes in the facility in accordance with state law.

Comment. Section 44203 is amended to substitute references to the Environment Code provisions that continue former Chapter 3 (commencing with Section 41700) of, former Chapter 4 (commencing with Section 42300) of, and former Chapter 5 (commencing with Section 42700) of, Part 4 of, and former Part 6 (commencing with Section 44300) of, Division 26 of the Health and Safety Code.

Rev. & Tax. Code § 6262 (amended). Vehicles subject to fee

SEC. _____. Section 6262 of the Revenue and Taxation Code is amended to read:

6262. (a) In addition to any other fees and taxes required to be paid by the Vehicle Code and this code at the time of the registration of a motor vehicle, as defined in Section 415 of the Vehicle Code, a person making application to register a 1975 or subsequent model year gasoline-powered motor vehicle or a 1980 or subsequent model year diesel-powered motor vehicle which is subject to the requirements of Section 4000.2 of the Vehicle Code shall pay to the Department of Motor Vehicles a motor vehicle smog impact fee of three hundred

1 dollars (\$300) for any such motor vehicle which, prior to the date of application, was last
2 registered outside this state, unless the motor vehicle has been certified pursuant to ~~Chapter~~
3 ~~2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code~~
4 Chapter 3 (commencing with Section 41500) of Title 4 of Part 5 of Division 4 of the
5 Environment Code to meet the California carbon monoxide (CO), hydrocarbon (HC), and
6 oxides of nitrogen (NO subx) emission standards for the applicable model year, and the
7 California emission standard for that vehicle in that model year is more stringent than the
8 federal emission standards for CO, HC, or NO subx for that vehicle in that model year.
9 This subdivision does not authorize the registration of motor vehicles that are prohibited
10 from being brought into this state pursuant to ~~Article 1.5 (commencing with Section 43150)~~
11 ~~of Chapter 2 of Part 5 of Division 26 of the Health and Safety Code~~ Article 2 (commencing
12 with Section 41550) of Chapter 3 of Title 4 of Part 5 of Division 4 of the Environment
13 Code.

14 (b) The determination that a vehicle is subject to the fee imposed pursuant to this section
15 shall be made by the Department of Motor Vehicles, or its designee.

16 (c)(1) For purposes of this chapter, if a motor vehicle does not have affixed a vehicle
17 emission control label from which the Department of Motor Vehicles may determine
18 whether the vehicle is California-certified, the vehicle shall be presumed not to be
19 California-certified unless confirmed to be by the manufacturer.

20 (2) Any manufacturer of light-duty motor vehicles doing business in California shall
21 provide information, within 30 days from the date of the receipt of a request from the
22 Department of Motor Vehicles, stating whether a vehicle, identified in the request by the
23 vehicle identification number (VIN) assigned by the manufacturer in accordance with
24 federal law, has been certified for sale in California pursuant to ~~Chapter 2 (commencing~~
25 ~~with Section 43100) of Part 5 of Division 26 of the Health and Safety Code~~ Chapter 3
26 (commencing with Section 41500) of Title 4 of Part 5 of Division 4 of the Environment
27 Code.

28 (3) For purposes of this subdivision, "vehicle emission control label" means the
29 permanent label that vehicle manufacturers are required to affix to motor vehicles certified
30 by the State Air Resources Board for sale in California in accordance with ~~Chapter 2~~
31 ~~(commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code~~
32 Chapter 3 (commencing with Section 41500) of Title 4 of Part 5 of Division 4 of the
33 Environment Code and pursuant to Sections 1965 and 1965.5 of Title 13 of the California
34 Code of Regulations.

35 (d) After deduction of all costs incurred by the department in carrying out this section that
36 have been approved by the Department of Finance, the revenues received pursuant to this
37 section shall be deposited in the General Fund through June 30, 1998. On and after July 1,
38 1998, those revenues shall be deposited in the High Polluter Repair or Removal Account in
39 the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section
40 ~~44091 of the Health and Safety Code~~ 43804 of the Environment Code and shall be
41 available solely for the purpose of funding the low-income repair assistance program
42 established pursuant to ~~Section 44062.1 of the Health and Safety Code~~ Sections 44050 to
43 44057, inclusive, of the Environment Code and the voluntary accelerated retirement of
44 high-emission motor vehicles as specified in subdivisions (d) and (f) of Section ~~44091 of~~
45 ~~the Health and Safety Code~~ 43804 of the Environment Code.

46 (e) This section does not apply to any of the following:

47 (1) A commercial vehicle, as defined in Section 260 of the Vehicle Code, with an unladen
48 weight in excess of 6,000 pounds.

(2) Any vehicle owned by a person who, pursuant to military orders or within three years following the date of discharge from or release from active duty in the armed forces of the United States, enters California for the purpose of establishing or reestablishing residence or accepting gainful employment, if the vehicle was acquired by the owner in a foreign jurisdiction where those military orders required the owner's presence.

(3) Any vehicle that is required to be registered on or after January 1, 1993, that has been subject to the fee imposed by this section within the prior four years, if the emission control devices and systems were not modified out of state subsequent to the previous payment of that fee.

(f) Notwithstanding any other provision of law, the fee imposed pursuant to subdivision (a) is imposed pursuant to the Sales and Use Tax Law.

Comment. Section 6262 is amended to substitute references to the Environment Code provisions that continue former Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code and former Health and Safety Code Sections 44091 and 44062.1.

Veh. Code § 286 (amended). Exclusions to dealer

SEC. _____. Section 286 of the Vehicle Code is amended to read:

286. The term "dealer" does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical

possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, "racing vehicle" means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(l) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(1) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) The vehicles sold were donated to the institution or organization.

(3) They meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and have been issued a certificate pursuant to ~~Section 44015 of the Health and Safety Code~~ Section 42903 of the Environment Code.

(4) The institution or organization has qualified for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

Comment. Section 286 is amended to substitute a reference to the Environment Code provision that continues former Health and Safety Code Section 44015(a)-(b).

Veh. Code § 1667 (repealed). Notice of smog indexing program

SEC. ____ . Section 1667 of the Vehicle Code is repealed:

~~1667. (a) As part of its motor vehicle registration and registration renewal process, other than upon the initial registration of a new motor vehicle, the department shall inform motor vehicle owners of the vehicle smog indexing program. That notice shall be in the form developed by the State Air Resources Board in consultation with the department pursuant to subdivision (c) of Section 44254 of the Health and Safety Code.~~

~~(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.~~

☞ **Staff Note.** Vehicle Code 1667 never became operative and is repealed. This section is subject to an operation contingency that was not satisfied. See 1994 Cal. Stat. ch. 1192, § 32.

See also Air Resources Board, California Environmental Protection Agency, California Air Pollution Control Laws 415-17 (1998) (failure of operation contingency).

Veh. Code § 2814 (amended). Passenger vehicle inspection

SEC. ____ Section 2814 of the Vehicle Code is amended to read:

2814. Every driver of a passenger vehicle shall stop and submit the vehicle to an inspection of the mechanical condition and equipment of the vehicle at any location where members of the California Highway Patrol are conducting tests and inspections of passenger vehicles and when signs are displayed requiring such stop.


The Commissioner of the California Highway Patrol may make and enforce regulations with respect to the issuance of stickers or other devices to be displayed upon passenger vehicles as evidence that the vehicles have been inspected and have been found to be in safe mechanical condition and equipped as required by this code and equipped with certified motor vehicle pollution control devices as required by ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code which are correctly installed and in operating condition. Any sticker so issued shall be placed on the windshield within a seven-inch square as provided in Section 26708.

If, upon such inspection of a passenger vehicle, it is found to be in unsafe mechanical condition or not equipped as required by this code and the provisions of ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code, the provisions of Article 2 (commencing with Section 40150) of Chapter 1 of Division 17 of this code shall apply.

The provisions of this section relating to motor vehicle pollution control devices apply to vehicles of the United States or its agencies, to the extent authorized by federal law.


Comment. Section 2814 is amended to substitute references to the Environment Code provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 4000.1. Certificate of compliance or noncompliance

 **Staff Note.** Vehicle Code Section 4000.1 contains references to the provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code. These references must be replaced with appropriate sections of the Environment Code.

Conforming revisions to Section 4000.1 were set out in the staff draft of Parts 1 and 2, Division 4 of the Environment Code. See Memorandum 98-22. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Veh. Code § 4000.2. Out-of-state motor vehicles

 **Staff Note.** Vehicle Code Section 4000.2 contains references to subdivision (b) of Section 43654 of, Part 5 (commencing with Section 43000) of Division 26 of, and Section 44015 of, the Health and Safety Code. These references must be replaced with appropriate sections of the Environment Code.

Conforming revisions to Section 4000.2 were set out in the staff draft of Parts 1 and 2, Division 4 of the Environment Code. See Memorandum 98-22. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Veh. Code § 4000.3 (amended). Certificate of compliance

SEC. _____. Section 4000.3 of the Vehicle Code is amended to read:

4000.3. (a) Except as otherwise provided in Section 44011 of the Health and Safety Code 42900 of the Environment Code, the department shall require biennially, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code Part 5 (commencing with Section 40000) of Division 4 of the Environment Code, a valid certificate of compliance issued in accordance with Section 44015 of the Health and Safety Code Section 40903 of the Environment Code. The department, in consultation with the Department of Consumer Affairs, shall develop a schedule under which vehicles shall be required biennially to obtain certificates of compliance.

(b) The Department of Consumer Affairs shall provide the department with information on vehicle classes that are subject to the motor vehicle inspection and maintenance program.

(c) The department shall include any information pamphlet provided by the Department of Consumer Affairs with notification of the inspection requirement and with its renewal notices.

Comment. Section 4000.3 is amended to substitute references to the Environment Code provisions that continue former provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 4750 (amended). Refusal of registration

SEC. _____. Section 4750 of the Vehicle Code is amended to read:

4750. The department shall refuse registration, or renewal or transfer of registration, upon any of the following grounds:

(a) The application contains any false or fraudulent statement.

(b) The required fee has not been paid.

(c) The registration, or renewal or transfer of registration, is prohibited by the requirements of ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code.

(d) The owner of a heavy vehicle, which is subject to the heavy vehicle use tax imposed pursuant to Section 4481 of Title 26 of the United States Code, has not presented sufficient evidence, as determined by the department, that the tax for the vehicle has been paid pursuant to that section.

Comment. Section 4750 is amended to substitute a reference to the Environment Code provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 5201 (amended). Mounting of plates

SEC. _____. Section 5201 of the Vehicle Code is amended to read:

5201. License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging and shall be mounted in a position to be clearly visible, and shall be maintained in a condition so as to be clearly legible. The rear license plate shall be mounted not less than 12 inches nor more than 60 inches from the ground, and the front license plate shall be mounted not more than 60 inches from the ground, except as follows:

(a) The rear license plate on a tow truck may be mounted on the left-hand side of the mast assembly at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(b) The rear license plate on a tank vehicle hauling hazardous waste, as defined in Section 25117 of the Health and Safety Code, or asphalt material may be mounted not less than 12 inches nor more than 90 inches from the ground.

(c) The rear license plate on a truck tractor may be mounted at the rear of the cab of the vehicle, not less than 12 inches nor more than 90 inches from the ground.

(d) The rear license plate of a vehicle designed by the manufacturer for the collection and transportation of garbage, rubbish, or refuse and which is used regularly for the collection and transportation of such material by any person or governmental entity employed to collect, transport, and dispose of garbage, rubbish, or refuse may be mounted not less than 12 inches nor more than 90 inches from the ground.

(e) No covering shall be used on license plates. However, the installation of a cover over a lawfully parked vehicle to protect it from the weather and the elements does not constitute a violation of this subdivision. Any peace officer or other regularly salaried employee of a public agency designated to enforce laws, including local ordinances, relating to the parking of vehicles may temporarily remove so much of such a cover as is necessary to inspect any license plate, tab, or indicia of registration on a vehicle.

(f) No casing, shield, frame, border, or other device that obstructs or impairs the reading or recognition of a license plate by a remote emission sensing device, as specified in Sections 44081 and 44081.6 of the Health and Safety Code 43650 and 43700 of the Environment Code, shall be installed on, or affixed to, a vehicle.

Comment. Section 5201 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 44081(a) and 44081.6 (a).

Veh. Code § 5751.5 (amended). Transfer of title

SEC. _____. Section 5751.5 of the Vehicle Code is amended to read:

5751.5. (a) Upon transfer of the title or interest of the registered owner of a motor vehicle that is subject to ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code, if no certificate of compliance or certificate of noncompliance is submitted to the department pursuant to the exemptions described in paragraph (1) of subdivision (d) of Section 4000.1, the transferor of that vehicle shall sign and deliver to the transferee, upon completion of the transaction, the original copy of a statement, under penalty of perjury, that he or she has not modified the emissions system of the vehicle and does not have any personal knowledge of anyone else modifying the system in a manner that causes the emission system to fail to qualify for the issuance of a certificate of compliance pursuant to ~~Section 44015 of the Health and Safety Code~~ Sections 42903 of the Environment Code. The transferor shall keep a duplicate copy of the statement delivered to the transferee pursuant to this section. The department shall prescribe and make available to transferors the necessary forms to comply with this subdivision.

(b) Any form prescribed by the department pursuant to subdivision (a) shall contain the following statement and a space for the signatures of the transferor and transferee at the end of the statement:

"WARNING TO THE BUYER

"A certificate of compliance was submitted to the Department of Motor Vehicles for this vehicle within the past 60 days. However, at present, you may be purchasing a vehicle that may not be in compliance with specified emission standards.

1 "By signing this statement, you acknowledge that the seller is not required to provide you
2 with an additional certificate of compliance prior to the completion of this transaction.

3 "You may have this vehicle tested at a licensed smog check station prior to completion of
4 this transaction to verify compliance. If the vehicle passes the test, you shall be responsible
5 for the costs of the test. If the vehicle fails the test, the seller is obligated to reimburse you
6 the cost of having the vehicle tested and, without expense to you, must have the vehicle
7 repaired to comply with specified emission standards prior to completion of this
8 transaction.

9
10
11 _____
12 (Transferor) (Date)

13
14 _____
15 (Transferee) (Date)

16 (c) Any sale of a motor vehicle with regard to which the transferor is found to have
17 committed perjury, as described in subdivision (a), may be rescinded by the transferee
18 within 60 days of the date that the transferee obtained knowledge of the perjury. The
19 transferee shall be entitled to recover all consideration paid to the transferor and any interest
20 from the date of sale. In addition, the court may, upon motion, award reasonable attorney's
21 fees to the prevailing plaintiff.

22 **Comment.** Section 5751.5 is amended to substitute references to the Environment Code
23 provisions that continue former provisions of Part 5 (commencing with Section 43000) of
24 Division 26 of the Health and Safety Code.

25 **Veh. Code § 9250.11 (amended). Additional fees for South Coast Air Quality**
26 **Management District**

27 SEC. ____ Section 9250.11 of the Vehicle Code is amended to read:

28 9250.11. (a) In addition to any other fees specified in this code and the Revenue and
29 Taxation Code, a fee of one dollar (\$1) may be imposed by the South Coast Air Quality
30 Management District and shall be paid to the department, upon renewal of registration of
31 any motor vehicle subject to ~~Part 5 (commencing with Section 43000) of Division 26 of the~~
32 ~~Health and Safety Code Part 5 (commencing with Section 40000) of Division 4 of the~~
33 Environment Code and registered in the south coast district, except any vehicle that is
34 expressly exempted under this code from the payment of registration fees.

35 (b) Prior to imposing fees pursuant to this section, the south coast district board shall
36 approve the imposition of the fees through the adoption of a resolution by both a majority
37 of the district board and a majority of the district board who are elected officials. After
38 deducting all costs incurred pursuant to this section, the department shall distribute the
39 additional fees collected pursuant to subdivision (a) to the south coast district, which shall
40 use the fees to reduce air pollution from motor vehicles through implementation of Section
41 ~~40448.5 of the Health and Safety Code~~ 36406 of the Environment Code.

42 (c) Any memorandum of understanding reached between the district and a county prior to
43 the imposition of a one dollar (\$1) fee by a county shall remain in effect and govern the
44 allocation of the funds generated in that county by that fee.

45 (d) The South Coast Air Quality Management District shall adopt accounting procedures
46 to ensure that revenues from motor vehicle registration fees are not commingled with other
47 program revenues.

(e) This section shall become inoperative on August 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 9250.11 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Section 40448.5 and former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 9250.17 (amended). Collection and use of fees

SEC. _____. Section 9250.17 of the Vehicle Code is amended to read:

9250.17. (a) The department shall, if requested by a county air pollution control district, air quality management district, or unified or regional air pollution control district, collect fees established pursuant to Sections ~~44223 and 44225 of the Health and Safety Code~~ 40601 and 40602 of the Environment Code upon the registration or renewal of registration of any motor vehicle registered in the district, except those vehicles which are expressly exempted under this code from the payment of registration fees.

(b) After deducting all costs incurred pursuant to this section, the department shall distribute the revenues to the districts based upon the amount of fees collected from motor vehicles registered within each district.

(c) The department may annually expend for its costs not more than the following percentages of the fees collected pursuant to subdivision (a):

(1) Five percent during the first year after the operative date the fee is imposed or increased.

(2) Three percent during the second year after the operative date the fee is imposed or increased.

(3) One percent during any subsequent year.

Comment. Section 9250.17 is amended to substitute references to the Environment Code provisions that continue former Health and Safety Code Sections 44223 and 44225.

Veh. Code § 9250.18 (amended). Administrative fees

SEC. _____. Section 9250.18 of the Vehicle Code is amended to read:

9250.18. (a) The department shall collect the administrative fee established pursuant to Sections ~~44081 and 44081.6 of the Health and Safety Code~~ 43651 and 43701 of the Environment Code upon the renewal of registration or transfer of ownership of any motor vehicle registered in the state.

(b) On a monthly basis, after deducting its reasonable costs, the department shall transmit all revenues, including accrued interest, received pursuant to this section, for deposit in the Vehicle Inspection and Repair Fund, for use by the Department of Consumer Affairs pursuant to ~~Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code~~ Title 5 (commencing with Section 42300) of Part 5 of Division 4 of the Environment Code. Alternatively, the department and the Department of Consumer Affairs may, by interagency agreement, establish a procedure for the Department of Consumer Affairs to reimburse the department for its reasonable costs incurred in collecting the administrative fees.

Comment. Section 9250.18 is amended to substitute reference to the Environment Code provisions that continue former provisions of Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

Veh. Code § 11519 (amended). Registration of dismantled vehicles

SEC. _____. Section 11519 of the Vehicle Code is amended to read:

11519. (a) No vehicle that has been reported dismantled may be subsequently registered until there is submitted to the department with the prescribed bill of sale an appropriate application, official lamp and brake adjustment certificates issued by an official lamp and brake adjusting station licensed by the Department of Consumer Affairs, except that fleet owners of motor trucks of three or more axles which are more than 6,000 pounds unladen weight and truck tractors may instead submit an official lamp and brake certification for their rebuilt vehicle if they operate an inspection and maintenance station licensed by the commissioner pursuant to subdivision (b) of Section 2525, other documents and fees required, and, with respect to any motor vehicle subject to ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code, a valid certificate of compliance from a licensed motor vehicle pollution control device installation and inspection station indicating that the vehicle is properly equipped with a motor vehicle pollution control device or devices which are in proper operating condition and which are in compliance with the provisions of ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code.

(b) The department shall not register a vehicle that has been referred to the Department of the California Highway Patrol under subdivision (b) of Section 5505 or that has been selected for inspection by that department under subdivision (c) of that section, until the applicant for registration submits to the department a certification of inspection issued by the Department of the California Highway Patrol and all of the documents required under subdivision (a).

(c) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2003, deletes or extends that date.

Comment. Section 11519 is amended to substitute references to the Environment Code provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 11705 (amended). Suspension or revocation of license

SEC. _____. Section 11705 of the Vehicle Code is amended to read:

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, any illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

1 (5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor
2 vehicle.

3 (6) Failed to provide and maintain a clear physical division between the type of business
4 licensed pursuant to this chapter and any other type of business conducted at the established
5 place of business.

6 (7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant
7 thereto.

8 (8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or
9 regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

10 (9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or
11 regulation adopted pursuant thereto.

12 (10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4
13 of Division 5 or any rule or regulation adopted pursuant thereto.

14 (11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of
15 the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

16 (12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14
17 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

18 (13) Submitted a check, draft, or money order to the department for any obligation or fee
19 due the state which was dishonored or refused payment upon presentation.

20 (14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit
21 practiced on that person or fraudulent representations made to that person in the course of
22 the licensed activity.

23 For purposes of this paragraph, "fraud" includes any act or omission which is included
24 within the definition of either "actual fraud" or "constructive fraud" as defined in Sections
25 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section
26 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a
27 misrepresentation in any manner, whether intentionally false or due to gross negligence, of
28 a material fact; a promise or representation not made honestly and in good faith; an
29 intentional failure to disclose a material fact; and any act within Section 484 of the Penal
30 Code.

31 For purposes of this paragraph, "person" also includes a governmental entity.

32 (15) Failed to meet the terms and conditions of an agreement entered into pursuant to
33 Section 11707.

34 (16) Violated ~~Section 43151, 43152, or 43153 of, or subdivision (b) of Section~~
35 ~~44072.10 of, the Health and Safety Code~~ Section 41551, 41552, 41553, or 44408 of the
36 Environment Code.

37 (b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a
38 transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch,
39 distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license
40 issued to a transporter, manufacturer, manufacturer branch, remanufacturer,
41 remanufacturer branch, distributor, distributor branch, or dealer.

42 (c) Except as provided in Section 11707, every hearing provided for in this section shall
43 be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of
44 Division 3 of Title 2 of the Government Code.

45 **Comment.** Section 11705 is amended to substitute references to the Environment Code
46 provisions that continue former Health and Safety Code Sections 43151, 43152, 43153, and
47 44072.10(b).

Veh. Code § 14607.6 (amended). Motor vehicles subject to forfeiture

SEC. _____. Section 14607.6 of the Vehicle Code is amended to read:

14607.6. (a) Notwithstanding any other provision of law, and except as provided in this section, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

(b) A peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed.

(c)(1) If a driver is unable to produce a valid driver's license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding a vehicle, a peace officer shall attempt to verify the license status of a driver who claims to be properly licensed but is unable to produce the license on demand of the peace officer.

(2) A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.

(3) A peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle.

(4) A registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment pursuant to subdivision (n).

(5) If the driver of a vehicle impounded pursuant to this subdivision was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the vehicle shall be released pursuant to this code and is not subject to forfeiture.

(d)(1) This subdivision applies only if the driver of the vehicle is a registered owner of the vehicle at the time of impoundment. Except as provided in paragraph (5) of subdivision (c), if the driver of a vehicle impounded pursuant to subdivision (c) was a registered owner of the vehicle at the time of impoundment, the impounding agency shall authorize release of the vehicle if, within three days of impoundment, the driver of the vehicle at the time of impoundment presents his or her valid driver's license, including a valid temporary California driver's license or permit, to the impounding agency. The vehicle shall then be released to a registered owner of record at the time of impoundment, or an agent of that owner authorized in writing, upon payment of towing and storage charges related to the impoundment, and any administrative charges authorized by Section 22850.5, providing

1 that the person claiming the vehicle is properly licensed and the vehicle is properly
2 registered. A vehicle impounded pursuant to the circumstances described in paragraph (3)
3 of subdivision (c) shall be released to a registered owner whether or not the driver of the
4 vehicle at the time of impoundment presents a valid driver's license.

5 (2) If there is a community property interest in the vehicle impounded pursuant to
6 subdivision (c), owned at the time of impoundment by a person other than the driver, and
7 the vehicle is the only vehicle available to the driver's immediate family that may be
8 operated with a class C driver's license, the vehicle shall be released to a registered owner
9 or to the community property interest owner upon compliance with all of the following
10 requirements:

11 (A) The registered owner or the community property interest owner requests release of
12 the vehicle and the owner of the community property interest submits proof of that interest.

13 (B) The registered owner or the community property interest owner submits proof that he
14 or she, or an authorized driver, is properly licensed and that the impounded vehicle is
15 properly registered pursuant to this code.

16 (C) All towing and storage charges related to the impoundment and any administrative
17 charges authorized pursuant to Section 22850.5 are paid.

18 (D) The registered owner or the community property interest owner signs a stipulated
19 vehicle release agreement, as described in paragraph (3), in consideration for the
20 nonforfeiture of the vehicle. This requirement applies only if the driver requests release of
21 the vehicle.

22 (3) A stipulated vehicle release agreement shall provide for the consent of the signator to
23 the automatic future forfeiture and transfer of title to the state of any vehicle registered to
24 that person, if the vehicle is driven by a driver with a suspended or revoked license, or by
25 an unlicensed driver. The agreement shall be in effect for only as long as it is noted on a
26 driving record maintained by the department pursuant to Section 1806.1.

27 (4) The stipulated vehicle release agreement described in paragraph (3) shall be reported
28 by the impounding agency to the department not later than 10 days after the day the
29 agreement is signed.

30 (5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a
31 registered owner indicates that a prior stipulated vehicle release agreement was signed by
32 that person.

33 (e)(1) The impounding agency, in the case of a vehicle that has not been redeemed
34 pursuant to subdivision (d), or that has not been otherwise released, shall promptly
35 ascertain from the department the names and addresses of all legal and registered owners of
36 the vehicle.

37 (2) The impounding agency, within two days of impoundment, shall send a notice by
38 certified mail, return receipt requested, to all legal and registered owners of the vehicle, at
39 the addresses obtained from the department, informing them that the vehicle is subject to
40 forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice
41 shall also include instructions for filing a claim with the district attorney, and the time limits
42 for filing a claim. The notice shall also inform any legal owner of its right to conduct the
43 sale pursuant to subdivision (g). If a registered owner was personally served at the time of
44 impoundment with a notice containing all the information required to be provided by this
45 paragraph, no further notice is required to be sent to a registered owner. However, a notice
46 shall still be sent to the legal owners of the vehicle, if any. If notice was not sent to the legal
47 owner within two working days, the impounding agency shall not charge the legal owner
48 for more than 15-days' impoundment when the legal owner redeems the impounded
49 vehicle.

(3) No processing charges shall be imposed on a legal owner who redeems an impounded vehicle within 15 days of the impoundment of that vehicle. If no claims are filed and served within 15 days after the mailing of the notice in paragraph (2), or if no claims are filed and served within five days of personal service of the notice specified in paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the district attorney shall prepare a written declaration of forfeiture of the vehicle to the state. A written declaration of forfeiture signed by the district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant shall be deemed not to have been filed.

(4) If a claim is timely filed and served, then the district attorney shall file a petition of forfeiture with the appropriate justice, juvenile, or municipal court within 10 days of the receipt of the claim. The district attorney shall establish an expedited hearing date in accordance with instructions from the court, and the court shall hear the matter without delay. The court filing fee, not to exceed fifty dollars (\$50), shall be paid by the claimant, but shall be reimbursed by the impounding agency if the claimant prevails. To the extent practicable, the civil and criminal cases shall be heard at the same time in an expedited, consolidated proceeding.

(5) The burden of proof in the civil case shall be on the prosecuting agency, by a preponderance of the evidence. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture does not require as a condition precedent the conviction of a defendant of an offense which made the vehicle subject to forfeiture. The filing of a claim within the time limits specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the action authorized by that paragraph.

(6) All right, title, and interest in the vehicle shall vest in the state upon commission of the act giving rise to the forfeiture.

(f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is issued by the district attorney of the county of the impounding agency or a court, as the case may be, pursuant to subdivision (e).

(g) Any legal owner who in the regular course of business conducts sales of repossessed or surrendered motor vehicles may take possession and conduct the sale of the forfeited vehicle if it notifies the agency impounding the vehicle of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e). Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given by the legal owner for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (i).

(h) If the legal owner does not notify the agency impounding the vehicle of its intent to conduct the sale as provided in subdivision (g), the agency shall offer the forfeited vehicle for sale at public auction within 60 days of receiving title to the vehicle. Low value vehicles shall be disposed of pursuant to subdivision (k).

(i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following priority:

(1) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of judicial proceedings, if any.

1 (2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner
2 remaining as of the date of sale, including accrued interest or finance charges and
3 delinquency charges, providing that the principal indebtedness was incurred prior to the
4 date of impoundment.

5 (3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a
6 registered or legal owner, to satisfy any indebtedness so secured if written notification of
7 demand is received before distribution of the proceeds is completed. The holder of a
8 subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest
9 and, unless it does so upon request, is not entitled to distribution pursuant to this
10 paragraph.

11 (4) To any other person, other than a registered or legal owner, who can reasonably
12 establish an interest in the vehicle, including a community property interest, to the extent of
13 his or her provable interest, if written notification is received before distribution of the
14 proceeds is completed.

15 (5) Of the remaining proceeds, funds shall be made available to pay any local agency and
16 court costs, that are reasonably related to the implementation of this section, that remain
17 unsatisfied.

18 (6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the
19 Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal
20 program created by ~~Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of~~
21 ~~Division 26 of the Health and Safety Code, Chapter 8 (commencing with Section 43800) of~~
22 Title 5 of Part 5 of Division 4 of the Environment Code and half shall be transferred to the
23 general fund of the city or county of the impounding agency, or the city or county where
24 the impoundment occurred. A portion of the local funds may be used to establish a reward
25 fund for persons coming forward with information leading to the arrest and conviction of
26 hit and run drivers and to publicize the availability of the reward fund.

27 (j) The person conducting the sale shall disburse the proceeds of the sale as provided in
28 subdivision (i) and shall provide a written accounting regarding the disposition to the
29 impounding agency and, on request, to any person entitled to or claiming a share of the
30 proceeds, within 15 days after the sale is conducted.

31 (k) If the vehicle to be sold pursuant to this section is not of the type that can readily be
32 sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or
33 donated to an eleemosynary institution. License plates shall be removed from any vehicle
34 conveyed to a dismantler pursuant to this subdivision.

35 (l) No vehicle shall be sold pursuant to this section if the impounding agency determines
36 the vehicle to have been stolen. In this event, the vehicle may be claimed by the registered
37 owner at any time after impoundment, providing the vehicle registration is current and the
38 registered owner has no outstanding traffic violations or parking penalties on his or her
39 driving record or on the registration record of any vehicle registered to the person. If the
40 identity of the legal and registered owners of the vehicle cannot be reasonably ascertained,
41 the vehicle may be sold.

42 (m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture of
43 any vehicle pursuant to this section may recover the amount of the loss from the
44 unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to a
45 business establishment in good faith, and an unlicensed driver employed or otherwise
46 directed by the business establishment is the cause of the impoundment of the vehicle, a
47 registered owner of the impounded vehicle may recover damages for the loss of use of the
48 vehicle from the business establishment.

(n)(1) The impounding agency, if requested to do so not later than 10 days after the date the vehicle was impounded, shall provide the opportunity for a poststorage hearing to determine the validity of the storage to the persons who were the registered and legal owners of the vehicle at the time of impoundment, except that the hearing shall be requested within three days after the date the vehicle was impounded if personal service was provided to a registered owner pursuant to paragraph (2) of subdivision (e) and no mailed notice is required.

(2) The poststorage hearing shall be conducted not later than two days after the date it was requested. The impounding agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. Failure of either the registered or legal owner to request a hearing as provided in paragraph (1) or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(3) The agency employing the person who directed the storage is responsible for the costs incurred for towing and storage if it is determined that the driver at the time of impoundment had a valid driver's license.

(o) As used in this section, "days" means workdays not including weekends and holidays.

(p) Charges for towing and storage for any vehicle impounded pursuant to this section shall not exceed the normal towing and storage rates for other vehicle towing and storage conducted by the impounding agency in the normal course of business.

(q) The Judicial Council and the Department of Justice may prescribe standard forms and procedures for implementation of this section to be used by all jurisdictions throughout the state.

(r) The impounding agency may act as the agent of the state in carrying out this section.

(s) No vehicle shall be impounded pursuant to this section if the driver has a valid license but the license is for a class of vehicle other than the vehicle operated by the driver.

(t) This section does not apply to vehicles subject to Sections 14608 and 14609, if there has been compliance with the procedures in those sections.

Comment. Section 14607.6 is amended to substitute a reference to the Environment Code provisions that continue former Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

Veh. Code § 24007. Responsibility of dealer or other person selling motor vehicle

☞ **Staff Note.** Vehicle Code Section 24007 contains references to provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code. These references must be replaced with appropriate sections of the Environment Code.

Conforming revisions to Section 24007 were set out in the staff draft of Parts 1 and 2, Division 4 of the Environment Code. See Memorandum 98-22. Rather than set the section out again here, changes necessary to enactment of this part will be incorporated in the revised draft.

Veh. Code § 24007.5 (amended). Sale by auctioneer or public agency

SEC. _____. Section 24007.5 of the Vehicle Code is amended to read:

24007.5. (a) (1) No auctioneer or public agency shall sell, at public auction, any vehicle specified in subdivision (a) of Section 24007, which is not in compliance with this code.

(2) Paragraph (1) does not apply to a vehicle that is sold under the conditions specified in subdivision (c), (d), (e), or (g) or is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(b) Except with respect to the sale of a vehicle specified in paragraph (2) of subdivision (a), the consignor of any vehicle, specified in subdivision (b) of Section 24007, sold at public auction, 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 ~~42903 of the Environment Code~~.

(c) Notwithstanding any other provision of this code, if, in the opinion of a public utility or public agency, the cost of repairs to a vehicle exceeds the value of the vehicle to the public utility or public agency, the public utility or public agency shall, as transferee or owner, surrender the certificates of registration, documents satisfactory to the Department of Motor Vehicles showing proof of ownership, and the license plates issued for the vehicle to the Department of Motor Vehicles. As used in this section, "public utility" means a public utility as described in Sections 218, 222, and 234 of the Public Utilities Code.

(d) The public utility or public agency having complied with subdivision (c) shall, upon sale of the vehicle, give to the purchaser a bill of sale which includes, in addition to any other required information, the last issued license plate number.

(e) (1) Subdivisions (a) and (b) do not apply to any judicial sale, including, but not limited to, a bankruptcy sale, conducted pursuant to a writ of execution or order of court.

(2) Subdivision (b) does not apply to any lien sale if the lienholder does both of the following:

(A) Gives the notice required by subdivisions (a) and (b) of Section 5900.


(B) Notifies the buyer that California law requires that the buyer obtain a certificate of compliance or noncompliance and register the vehicle with the department, and that failure to comply will result in a lien against any vehicle owned by the buyer pursuant to Section 10876 of the Revenue and Taxation Code, enforceable pursuant to Section 10877 of the Revenue and Taxation Code and Article 6 (commencing with Section 9800) of Chapter 6 of Division 3. Receipt of the notice required by this subparagraph shall be evidenced by the signature of the buyer.

(f) The exceptions in this section do not apply to any requirements for registration of a vehicle pursuant to Section 4000.1, 4000.2, or 4000.3.

(g) Except as otherwise provided in subdivision (e), any public agency or auctioneer which sells, at public auction, any vehicle specified in subdivision (b) of Section 24007, which is registered to a public agency or a public utility, shall provide each bidder with a notice in writing that a certificate of compliance is required to be obtained, certifying that the vehicle complies with ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the Environment Code, before the vehicle may be registered in this state, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use. Prior to the sale of the vehicle, a public agency or public utility shall remove the license plates from the vehicle and surrender them to the department. The purchaser of the vehicle shall be given a bill of sale which includes, in addition to any other required information, the vehicle's last issued license plate number.

Comment. Section 24007.5 is amended to substitute reference to the Environment Code provisions that continue former provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 27156. Gross polluters

 **Staff Note.** Vehicle Code Section 27156 contains a reference to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code. The reference must be

1 replaced with a reference to Part 5 (commencing with Section 40000) of Division 4 of the
2 Environmental Code.

3 Conforming revisions to Section 27156 were set out in the staff draft of Parts 1 and 2,
4 Division 4 of the Environment Code. See Memorandum 98-22. Rather than set the section
5 out again here, changes necessary to enactment of this part will be incorporated in the revised
6 draft.

7 **Veh. Code § 27156.1 (amended). Auxiliary gasoline fuel tanks**

8 SEC. _____. Section 27156.1 of the Vehicle Code is amended to read:

9 27156.1. The installation, prior to January 1, 1974, of an auxiliary gasoline fuel tank for
10 use on a 1973 or earlier model year motor vehicle, which vehicle is required, pursuant to
11 ~~Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code~~ Part
12 5 (commencing with Section 40000) of Division 4 of the Environment Code or the National
13 Emission Standards Act (42 U.S.C., Secs. 1857f-1 to 1857f-7, inclusive 7521 to 7525,
14 inclusive, 7541 to 7547, inclusive, and 7550), to be equipped with a fuel system
15 evaporative loss control device, shall not be deemed a violation of Section 27156 of this
16 code. As used in this section, the term "auxiliary gasoline fuel tank," has the same meaning
17 as defined in subdivision (b) of ~~Section 43834 of the Health and Safety Code~~ Section
18 40904 of the Environment Code.

19 **Comment.** Section 27156.1 is amended to substitute references to the Environment Code
20 provisions that continue former provisions of Part 5 (commencing with Section 43000) of
21 Division 26 of the Health and Safety Code .

22 The former reference to Sections 1857f-1 to 1857f-7 of Title 42 of the U.S. Code is
23 obsolete and has been replaced with a reference to Sections 7521 to 7525, inclusive, 7541 to
24 7547, inclusive, and 7550 of Title 42 of the U.S. Code.

25 **Veh. Code § 27157 (amended). Vehicle pollution emission regulations**

26 SEC. _____. Section 27157 of the Vehicle Code is amended to read:

27 27157. The State Air Resources Board, after consultation with, and pursuant to the
28 recommendations of, the commissioner, shall adopt such reasonable regulations as it
29 determines are necessary for the public health and safety regarding the maximum allowable
30 emissions of pollutants from vehicles upon a highway. Such regulations shall apply only to
31 vehicles required by ~~Part 5 (commencing with Section 43000) of Division 26 of the Health~~
32 ~~and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the
33 Environment Code or any federal law or regulation to be equipped with devices or systems
34 to control emission of pollutants from the exhaust and shall not be stricter than the emission
35 standards required of that model year motor vehicle when first manufactured.

36 **Comment.** Section 27157 is amended to substitute a reference to the Environment Code
37 provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of
38 the Health and Safety Code.

39 **Veh. Code § 27159 (amended). Removal of heavy-duty diesel motor vehicles from service**

40 SEC. _____. Section 27159 of the Vehicle Code is amended to read:

41 27159. Any uniformed member of the California Highway Patrol may order a vehicle
42 stored when it is located within the territorial limits in which the member may act if
43 requested by a representative of the State Air Resources Board to remove the vehicle from
44 service pursuant to ~~subdivision (f) of Section 44011.6 of the Health and Safety Code~~
45 Section 43006 of the Environment Code. All towing and storage fees for a vehicle removed
46 under this section shall be paid by the owner.

1 **Comment.** Section 27159 is amended to substitute a reference to the Environment Code
2 provisions that continue former Health and Safety Code Section 44011.6(f).

3 **Veh. Code § 28114. Heavy-duty vehicles operated by transit authority**

4 ☞ **Staff Note.** Vehicle Code Section 28114 contains a reference to Part 5 (commencing
5 with Section 43000) of Division 26 of the Health and Safety Code. The reference must be
6 replaced with a reference to Part 5 (commencing with Section 40000) of Division 4 of the
7 Environmental Code.

8 Conforming revisions to Section 28114 were set out in the staff draft of Parts 1 and 2,
9 Division 4 of the Environment Code. See Memorandum 98-22. Rather than set the section
10 out again here, changes necessary to enactment of this part will be incorporated in the revised
11 draft.

12 **Veh. Code § 38390 (amended). Pollution control device**

13 SEC. _____. Section 38390 of the Vehicle Code is amended to read:

14 38390. No person shall operate or maintain in a condition of readiness for operation any
15 off-highway motor vehicle which is required to be equipped with a motor vehicle pollution
16 control device under ~~Part 5 (commencing with Section 43000) of Division 26 of the Health~~
17 ~~and Safety Code~~ Part 5 (commencing with Section 40000) of Division 4 of the
18 Environment Code or with any other certified motor vehicle pollution control device
19 required by any other state law or any rule or regulation adopted pursuant to such law, or
20 required to be equipped with a motor vehicle pollution control device pursuant to the Clean
21 Air Act (42 U.S.C. 1857 7401 et seq.) and the standards and regulations promulgated
22 thereunder, unless it is equipped with the required motor vehicle pollution control device
23 which is correctly installed and in operating condition. No person shall disconnect, modify,
24 or alter any such required device. Notwithstanding ~~Section 43107 of the Health and Safety~~
25 ~~Code 41502 of the Environment Code~~, this section shall apply only to off-highway motor
26 vehicles of the 1978 or later model year.

27 **Comment.** Section 38390 is amended to substitute references to the Environment Code
28 provisions that continue former provisions of Part 5 (commencing with Section 43000) of
29 Division 26 of the Health and Safety Code .

30 The former reference to Section 1857 *et seq.* of Title 42 of the U.S. Code is obsolete and
31 has been replaced with a reference to Section 7401 *et seq.* of Title 42 of the U.S. Code.

32 **Veh. Code § 40001 (amended). Compliance requirements**

33 SEC. _____. Section 40001 of the Vehicle Code is amended to read:

34 40001. (a) It is unlawful for the owner, or any other person, employing or otherwise
35 directing the driver of any vehicle to cause the operation of the vehicle upon a highway in
36 any manner contrary to law.

37 (b) It is unlawful for an owner to request, cause, or permit the operation of any vehicle:

38 (1) Which is not registered or for which any fee has not been paid under this code.

39 (2) Which is not equipped as required in this code.

40 (3) Which does not comply with the size, weight, or load provisions of this code.

41 (4) Which does not comply with the regulations promulgated pursuant to this code, or
42 with applicable city or county ordinances adopted pursuant to this code.

43 (5) Which is not in compliance with the provisions of ~~Part 5 (commencing with Section~~
44 ~~43000) of Division 26 of the Health and Safety Code~~ Part 5 (commencing with Section
45 40000) of Division 4 of the Environment Code and the rules and regulations of the State
46 Air Resources Board.

(c) Whenever a violation is chargeable to the owner or lessee of a vehicle pursuant to subdivision (a) or (b), the driver shall not be arrested or cited for the violation unless the vehicle is registered in a state or country other than California, or unless the violation is for an offense that is clearly within the responsibility of the driver. The Department of the California Highway Patrol shall report to the Legislature on or before January 1, 1988, concerning the effects of this subdivision.

(d) Whenever the owner, or lessee, or any other person is prosecuted for a violation pursuant to this section, the court may, on the request of the defendant, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance or operation of the vehicle, or any other person who gives false or erroneous information in a written certification of actual gross weight, a codefendant. However, the court may make the driver a codefendant only if the driver is the owner or lessee of the vehicle, or the driver is an employee or a contractor of the defendant who requested the court to make the driver a codefendant. If the codefendant is held solely responsible and found guilty, the court may dismiss the charge against the defendant.

(e) In any prosecution under this section, it is a rebuttable presumption that any person who gives false or erroneous information in a written certification of actual gross cargo weight has directed, requested, caused, or permitted the operation of a vehicle in a manner contrary to law in violation of subdivision (a) or (b), or both.

Comment. Section 40001 is amended to substitute a reference to the Environment Code provisions that continue former Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

Veh. Code § 42001.14 (amended). Disconnecting, modifying, or altering required pollution control devices

SEC. _____. Section 42001.14 of the Vehicle Code is amended to read:

42001.14. (a) Every person convicted of an infraction for the offense of disconnecting, modifying, or altering a required pollution control device in violation of Section 27156 shall be punished as follows:

(1) For a first conviction, by a fine of not less than fifty dollars (\$50), nor more than one hundred dollars (\$100).

(2) For a second or subsequent conviction, by a fine of not less than one hundred dollars (\$100), nor more than two hundred fifty dollars (\$250).

(b)(1) The fines collected under subdivision (a) shall be allocated pursuant to subdivision (d) of Section 42001.2.

(2) The amounts allocated pursuant to paragraph (1) to the air pollution control district or air quality management district in which the infraction occurred shall first be allocated to the State Air Resources Board and the Bureau of Automotive Repair to pay the costs of the state board and the bureau under Article 8 (commencing with Section 44080) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code Chapter 7 (commencing with Section 43600) of Title 5 of Part 5 of Division 4 of the Environment Code.

(3) The funds collected under subdivision (a) which are not required for purposes of paragraph (2) shall be used for the enforcement of Section 27156 or for the implementation of Article 8 (commencing with Section 44080) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code Chapter 7 (commencing with Section 43600) of Title 5 of Part 5 of Division 4 of the Environment Code.

Comment. Section 42001.14 is amended to substitute references to the Environment Code provisions that continue former Article 8 (commencing with Section 44080) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

Veh. Code § 42001.2 (amended). Fines for violations of § 27153.5

SEC. _____. Section 42001.2 of the Vehicle Code is amended to read:

42001.2. (a) Every person convicted of an infraction for a violation of Section 27153.5 with a motor vehicle having a manufacturer's maximum gross vehicle weight rating of 6,001 or more pounds shall be punished by a fine for the first offense of not less than two hundred fifty dollars (\$250) and not more than two thousand five hundred dollars (\$2,500), and for a second or subsequent offense within one year of not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000).

(b) Every person convicted of an infraction for a second or subsequent violation of Section 27153, or a second or subsequent violation of 27153.5, with a motor vehicle having a manufacturer's maximum gross vehicle weight rating of less than 6,001 pounds, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

(c) Notwithstanding Section 40616, the penalties in subdivision (b) apply when a person is guilty of willfully violating a written promise to correct, or willfully failing to deliver proof of correction, as prescribed in Section 40616, when an offense described in subdivision (b) was the violation for which the notice to correct was issued and the person was previously convicted of the same offense, except that costs of repair shall be limited to those specified in Section 44017 of the Health and Safety Code 42953 of the Environment Code.

(d) Notwithstanding any other provision of law, revenues collected from fines and forfeitures imposed under this section shall be allocated as follows: 15 percent to the county in which the prosecution is conducted, 10 percent to the prosecuting agency, 25 percent to the enforcement agency, except the Department of the California Highway Patrol, and 50 percent to the air quality management district or air pollution control district in which the infraction occurred, to be used for programs to regulate or control emissions from vehicular sources of air pollution. If the enforcement agency is the Department of the California Highway Patrol, the revenues shall be allocated 25 percent to the county in which the prosecution is conducted, 25 percent to the prosecuting agency, and 50 percent to the air quality management district or air pollution control district in which the infraction occurred. If no prosecuting agency is involved, the revenues that would otherwise be allocated to the prosecuting agency shall instead be allocated to the air quality management district or air pollution control district in which the infraction occurred.

(e) For the purposes of subdivisions (a), (b), and (c), a second or subsequent offense does not include an offense involving a different motor vehicle.

Comment. Section 42001.2 is amended to substitute a reference to the Environment Code provisions that continue former Health and Safety Code Section 44017.

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
43000	40000	43014	41304
43000.5	40001	43015	40500
43001 (1st pt.)	40400	43016	40300
43001 (last ¶)	Omitted	43017	40301
43002	40401	43018 (a)	40100
43002.2	40402	43018 (b)	40101
43004	40403 (a)	43018 (c) & (e)	40102
43005	40403 (b)	43018 (d)	40103
43006	40851	43018 (f)	Omitted
43007	41300	43019	40501
43008	41301	43020	41000
43008.5	40206	43021	41001
43008.6 (a)	41402	43022	40502
43008.6 (b)-(d)	41403	43025	41050
43009	41302	43026	41051
43009.5	41401	43027	41052
43010	Omitted	43028	41053
43011	41303	43029	41054
43012 (a)-(b) & (i)	41404	43030 (a)-(b)	41055
43012 (c)	41405	43030 (c)	41056
43012 (d)	41406	43031	41057
43012 (e)-(f)	41407	43031.5	41058
43012 (g)	41408	43032	41059
43012 (h)	41409	43033	41060
43012 (j)	41400	43100	41503
43013 (a)-(b)	40201	43101	41500
43013 (c)	40202	43101.5	41501
43013 (d)	40203	43102	41504
43013 (e)	40204	43103	41508
43013 (f)-(g)	40205	43104	41507
43013 (h)	40200	43105	41758
43013.2 (a)	41100	43106	41509
43013.2 (b)	41101	43107	41502
43013.2 (c)	41102	43108	41506
43013.2 (d)	41103	43150	41550
43013.2 (e)	41104 (a)	43151	41551
43013.2 (f)(1st snt.)	41104 (b)	43152	41552
43013.2 (f)(last 3 snt.)	41105 (a)	43153	41553
43013.2 (g)	41105 (b)	43154	41750
43013.2 (h)	41106	43155	41751
43013.2 (i)	Omitted	43156	41554
43013.5 (a)	41003	43200	41700
43013.5 (b)	40805	43201	41752

Note: This table is sorted in decimal order. Some sections occur in serial order in the codes.

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
43202	41650	43803	42103
43203	41651	43804	42104
43203.5	41505	43805	42105
43204	41600	43806	42201
43205	41601	43820	40900
43205.5	41602	43821	40901
43206	41701	43823	40902
43207	41757	43824	40903
43208	41653	43830 (a)-(b)	40800
43209	41755	43830 (c)-(h)	40801
43210	41652	43831	40802
43210.5	41702	43832	40803
43211	41753	43833	40804
43212	41754	43834	40904
43213	41756	43835	40850
43600	41800	43840	Omitted
43601	41802	43841	Omitted
43602	41803	43841.5	Omitted
43603	41804	43843	Omitted
43604	41805	43844	Omitted
43610	41806	43845	42200
43611	41807	44000	42300
43612	41808	44000.5 (a)	42302
43613	41809	44000.5 (b)	42303
43614	41810	44000.5 (c)(1)	42304
43630	41811	44000.5 (c)(2)	42400
43635	41812	44001 (a)	42306
43636	41813	44001 (b)	42307
43640	41815	44001 (c)	42308
43641	41816	44001.3	42309
43642	41817	44001.5	42500
43643	41818	44002	42501
43644	41801	44003 (a)	42700
43645	41814	44003 (b)	42702
43646	Omitted	44003 (c)	42703
43650	41850	44004 (a)(1)	42707
43651	41852	44004 (a)(2d ¶)	42402
43652	41851	44004 (b)	42401
43653	41853	44005(a)	42502
43654	41854	44005 (b)	42704
43655	41855	44010	42750
43656	41856	44010.5 (a)-(c)	42850
43656.5	41857	44010.5 (d)	42864
43657	41858	44010.5 (e)	42851
43658	41859	44010.5 (f)	42852
43659	41860	44010.5 (g)	42853
43660	41861	44010.5 (h)	42854
43700	41900	44010.5 (i)	42863
43701	41901	44010.5 (j)	42862
43702 (a)-(b)	41902	44010.5 (k)	42855
43702 (c)	41903	44010.5 (l)	42856
43702 (d)	41904	44010.5 (m)	42857
43706	Omitted	44010.5 (n)	42858
43707	Omitted	44010.5 (o)	42859
43800	42101	44010.5 (p)	42860
43801	42100	44010.5 (q)	42861
43802	42102	44011	42900

Note: This table is sorted in decimal order. Some sections occur in serial order in the codes.

Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
44011.1	42901	44021 (a)(4)	42603
44011.5	42902	44021 (b)-(c)	42604
44011.6 (a)	43000	44021 (d)	42605
44011.6 (b)	43003	44021 (e)	42606
44011.6 (c)-(d)	43004	44024	42705
44011.6 (e)	43001	44024.5	42504
44011.6 (f)	43006	44025	42505
44011.6 (h)	43007	44030	43200
44011.6 (i)	43002	44030.5	43300
44011.6 (j)	43009	44031.5 (a)	43251
44011.6 (k)	43011	44031.5 (b) & (d)-(e)	43253
44011.6 (l)	43008	44031.5 (c)	43254
44011.6 (m)-(n)	43010	44031.5 (f)	43259
44011.6 (n)	43005	44032	43150
44012	42751	44033	43201
44013	42752	44034	43151
44013.5	Omitted	44034.1	43256
44014 (a)-(d)	42753	44035 (a)	43152
44014 (e)	43100	44035 (b)	43103
44014.2	42754	44036 (a)	43104
44014.4	42755	44036 (b)	43350
44014.5 (a)	42701	44036 (c)	43351
44014.5 (b)	42800	44036 (d)	43102
44014.5 (c)	42801	44036 (e)	43352
44014.5 (d)	42802	44036 (f)	43353
44014.5 (e)	42803	44036.1	43354
44014.5 (f)	42804	44036.2 (a)	43400
44014.5 (g)	42805	44036.2 (b)	43402
44014.5 (h)	42806	44036.2 (c)	43403
44014.5 (i)	42807	44036.2 (d)-(e)	43404
44014.7	42907	44036.2 (f)(1)	43405
44015 (a)-(b)	42903	44036.2 (f)(2)	43401
44015 (c)(1)	42950	44036.2 (g)	43406
44015 (c)(2)	42951	44036.3	43450
44015 (d)	42952	44036.5	43355
44015 (e)	42904	44036.8	43451
44015 (f)	42905	44037	43452
44015.5	42906	44037.1 (a)-(b)	43500
44016	42503	44037.1 (c)	43501
44017	42953	44037.2 (a) & (c)	43503
44017.1	42954	44037.2 (b)	43502
44017.3	42756	44038	43453
44017.5	42757	44039	43454
44018	42706	44040	43455
44019	42908	44041	43456
44020 (1st ¶)	43050	44045.5 (a)	43252
44020 (a)	43051	44045.5 (b)	42450
44020 (b)(1st snt.)	43052	44045.5 (c)	43257
44020 (b)(2d snt.)	43053	44045.5 (d)	43258
44020 (c)	43054	44045.6 (a)-(b)	43301
44020 (d)-(e)	43055	44045.6 (c)	43255
44020 (f)	43056	44045.6 (d)	43101
44020 (g)	43057	44050	44300
44020 (h)	43058	44050.5	44304
44021 (a)(1)	42600	44051	44302
44021 (a)(2)	42601	44051.5	44303
44021 (a)(3)	42602	44052	44305

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Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
44053	44311	44081.6 (a)	43700
44054	44307	44081.6 (b)-(c)	43702
44055	44312	44081.6 (d)-(e)	43703
44056 (a)(1st snt.)	44301 (a)	44081.6 (f)	43704
44056 (a)(2d snt.)	44308	44081.6 (g)	43701
44056 (b)	44301 (b)	44081.6 (h)	43705
44056 (c)	44306	44081.6 (i)	43706
44057	44310	44084	43601
44058	44309	44085	43603
44059	44313	44086	43602
44060 (a)-(b) & (f)	44000	44090	43800
44060 (c)	44001	44091	43804
44060 (d)	44100	44091.1	43805
44060 (e)	44002	44092	43801
44060 (g)	44003	44093	43802
44061	44101	44094	43803
44062 (1st ¶)	Omitted	44095 (a)	43806
44062 (2d ¶)	44102	44095 (b)(1)	43807
44062.1 (a)	44050	44095 (b)(2)	43808
44062.1 (b)	44051	44095 (c)	43809
44062.1 (c)	44052	44100	43900
44062.1 (d)	44053	44101	43901
44062.1 (e)	44054	44102	43902
44062.1 (f)	44055	44103	43909
44062.1 (g)	44056	44104	43913
44062.1 (h)	44057	44104.5 (a)	43910
44062.2	44103	44104.5 (b)	43911
44063	44104	44104.5 (c)	43912
44070	44200	44105	43903
44070.5	44201	44106	43905
44071	44202	44107	43904
44072	44400	44109	43906
44072.1	44405	44115	43907
44072.10 (a)	44412	44120	43908
44072.10 (b)	44408	44121	43914
44072.10 (c)	44410	44122	43915
44072.10 (d)	44409	44200	42000
44072.10 (e)(1st snt.)	44415	44201	42001
44072.10 (e)(2d snt.)	44413 (a)	44202	42002
44072.10 (f)-(g)	44413 (b)-(c)	44203	42003
44072.11 (a)	44416	44204	42004
44072.11 (b)	44417	44205	42005
44072.2	44407	44207	42006
44072.3	44406	44208	42007
44072.4	44401	44209	42008
44072.5	44404	44210	42009
44072.6	44402	44220	40600
44072.7	44403	44223	40601
44072.8	44411	44225	40602
44072.9	44414	44227	40603
44080	43600	44229	40650
44081 (a)	43650	44231	40604
44081 (b)	43651	44233	40651
44081 (c)	43652	44235	40652
44081 (d)	43653	44236	40653
44081 (e)	43654	44237	40654
44081 (f)	43655	44241 (a)	40700

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Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
44241 (b)	40702	44360(b)(1)	45550
44241 (c)	40701	44360(b)(2)-(4)	45551
44241 (d)-(f)	40703	44360(c)	45501
44241.5	40704	44360(d)	45553
44242 (a)-(c)	40705	44360(e)	45552
44242 (d)	40706	44361(a)	45600
44243 (a)	40751	44361(b)	45601
44243 (b)	40752	44361(c) & (d)	45602
44243 (c)	40753	44361(e)	45603
44243 (intro.)	40750	44362(a)	45604
44243.5	40754	44362(b)	45605
44244	40755	44363	45152
44244.1 (a)-(c)	40756	44364	45151
44244.1 (d)	40757	44365(a)	45150
44245	40605	44365(b)	45106
44246	40758	44366	45200
44247	40606	44380(a)-(b)	45250
44250	Omitted	44380(c)	45251
44251	Omitted	44380(d)	45252
44252	Omitted	44380(e)	45253
44253	Omitted	44380.1	45254
44254	Omitted	44380.5	45255
44257	Omitted	44381	45201
44300	45000	44382	45107
44301	45001	44384	Omitted
44302	45050	44390	45700
44303	45055	44391(a)-(c)	45701
44304	45060	44391(d)	45709
44306	45065	44391(e)	Omitted
44307	45070	44391(f)	45703
44308	45075	44391(g)	45704
44309	45090	44391(h)	45705
44320	45100	44391(i)	45706
44321	45101	44391(j)	45707
44322	45102	44392	45702
44323	45103	44393	45708
44324	45104	44394	45710
44325	45105	44400 (1st snt.)	46001(a)
44340	45300	44400 (2d snt.)	46000
44341	45301	44401	46002
44342	45400	44402	46001(b)
44343	45302	44403	46003
44344	45303	44404	46004
44344.4(a), (b) & (d)	45304	44470	46500
44344.4(c)	45080	44471(a)	46501
44344.5	45307	44471(b)	46502
44344.6	45306	44472	46503
44344.7	45305	44473(a)	46504
44345	45401	44473(b)	46505
44346(a) & (d)	45351	44473(c)	46506
44346(b)	45352	44474	46507
44346(c)	45353	44521	Omitted
44346(e)	45354	105400	47000
44346(f)	45355	105405	47050
44346(g)	45356	105410	47001
44346(h)	45350	105415	47002
44360(a)	45500	105420	47003

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Health & Safety Code	Env't Code	Health & Safety Code	Env't Code
105425	47004	106815	47250
105430	47051	106820	47251
106750	47100	106825	47252
106755	47160	106830	47253
106760	47165	106835	47254
106765	47170	106840	47103
106770	47155	106845	47102
106775	47101	106850	47255
106780	47203	106855	47256
106785	47204	106860	47300
106790	47200	106865	47301
106795	47201	119150	46600
106800	47202	119155	46601
106805	47205	119160	46602
106810	47104		

SESSION LAWS

Session Laws	Env't Code
1997 Cal. Stat. ch. 803, § 1.	42305
1997 Cal. Stat. ch. 803, § 2.	42301

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